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EUROPEAN COMMITTEE ON CRIME PROBLEMS
(CDPC)

COMMITTEE OF EXPERTS ON THE EVALUATION OF ANTI-MONEY LAUNDERING MEASURES
(MONEYVAL)

THIRD ROUND DETAILED ASSESSMENT REPORT ON G E O R G I A[1]

ANTI-MONEY LAUNDERING AND COMBATING THE FINANCING OF TERRORISM

Memorandum
prepared by the Secretariat
Directorate General of Human Rights and Legal Affairs

[1] Adopted by MONEYVAL at its 22nd Plenary meeting (Strasbourg, 19 – 23 February 2007).

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LIST OF ACRONYMS USED

AML Law	Anti-Money Laundering Law
ATC	Anti-Terrorist Centre
BS&RD	Banking Supervision and Regulation Division of the CBC
CCG	Criminal Code of Georgia
CDD	Customer Due Diligence
CETS	Council of Europe Treaty Series
CFT	Combating the financing of terrorism
CPC	Criminal Procedure Code of Georgia
CTR	Cash Transaction Reports
DNFBP	Designated Non-Financial Businesses and Professions
ETS	European Treaty Series [since 1.1.2004: CETS = Council of Europe Treaty Series]
FATF	Financial Action Task Force
FIU	Financial Intelligence Unit
FMS	Financial Monitoring Service of Georgia
GEL	Georgian Lari
IBEs	International Business Enterprises
IBUs	International Banking Units
ICCS	Insurance Companies Control Service
IN	Interpretative Note
ISS	Insurance State Supervision Service of Georgia
IT	Information Technology
LEA	Law Enforcement Agency
MLA	Mutual Legal Assistance
MLCO	Money Laundering Compliance Officer
MOU	Memorandum of Understanding

NBG	National Bank of Georgia
NCCT	Non-cooperative countries and territories
NSC	National Security Council of Georgia
OGBS	Offshore Group of Banking Supervisors
OSCE	Organisation for Security and Co-operation in Europe
PEP	Politically Exposed Persons
SOD	Special Operative Department
SRO	Self-Regulatory Organisation
SSPLII	Special Service on Prevention of Legalisation of Illicit Income
STRs	Suspicious transaction reports
SWIFT	Society for Worldwide Interbank Financial Telecommunication
UCITS	Undertakings for Collective Investment in Transferable Securities
USAID	United States Agency for International Development

I. PREFACE

1. The evaluation of the anti-money laundering (AML) and combating the financing of terrorism (CFT) regime of Georgia was based on the Forty Recommendations 2003 and the Nine Special Recommendations on Terrorist Financing 2001 of the Financial Action Task Force (FATF), together with the two Directives of the European Parliament and of the Council (91/308/EEC and 2001/97/EC), in accordance with MONEYVAL's terms of reference and Procedural rules, and was prepared using the AML/CFT Methodology 2004[2]. The evaluation was based on the laws, regulations and other materials supplied by Georgia, and information obtained by the evaluation team during its on-site visit to Georgia from 23 to 29 April 2006, and subsequently. During the on-site visit, the evaluation team met with officials and representatives of all relevant Georgian government agencies and the private sector. A list of the bodies met is set out in Annex I to the mutual evaluation report.

2. The evaluation team comprised: Ms Laura VAIK, State Prosecutor, Office of the Prosecutor General, Tallinn, Estonia (Legal Evaluator); Mr Nicola MUCCIOLI, Vice-Head, Financial Intelligence Unit, Banca Centrale della Repubblica di San Marino, Supervision Department, San Marino (Financial Evaluator); Mr Robert TYPA, Minister Counsellor, Ministry of Finance, Warsaw, Poland (Law Enforcement Evaluator); Mr Gert DEMMINK, Head, Expert Centre for Integrity, Central Bank of the Netherlands, Amsterdam, the Netherlands (Financial Evaluator); and Mr Bas JENNEN, Central Bank of the Netherlands, Expert Centre for Integrity, Amsterdam, the Netherlands (Financial Evaluator); and two members of the MONEYVAL Secretariat. The examiners reviewed the institutional framework, the relevant AML/CFT Laws, regulations and guidelines and other requirements, and the regulatory and other systems in place to deter money laundering and financing of terrorism through financial institutions and designated non-financial businesses and professions (DNFBP), as well as examining the capacity, the implementation and the effectiveness of all the systems.

3. This report provides a summary of the AML/CFT measures in place in Georgia as at the date of the on-site visit or immediately thereafter. It describes and analyses these measures, and provides recommendations on how certain aspects of the systems could be strengthened (see Table 2). It also sets out Georgia's levels of compliance with the FATF 40 + 9 Recommendations (see Table 1). Compliance or non-compliance with the EC Directives has not been considered in the ratings in Table 1.

[2] As updated in February 2006.

II. EXECUTIVE SUMMARY

1. Background Information

4. This report provides a summary of the AML/CFT measures in place in Georgia as at the date of the third on-site visit from 23 to 29 April 2006, or immediately thereafter. The report only covers those parts of Georgia under government control. It describes and analyses the measures in place, and provides recommendations on how certain aspects of the system could be strengthened. It also sets out Georgia's levels of compliance with the FATF 40 + 9 Recommendations.

5. Since the second evaluation in May 2003, there have been major changes. The basic building blocks of an AML/CFT system are now broadly in place. At the time of the last visit, Georgia had no anti-money laundering preventive law, no suspicious transaction reporting regime, no real provisional measures and confiscation regime or financial intelligence unit. The money laundering offence had never been used.

6. On 6 June 2003, after intensive dialogue between MONEYVAL and the Georgian authorities, the "Law of Georgia on Facilitating the Prevention of Illicit Income Legalisation" (the "AML Law") was signed and its provisions came into effect in January 2004. The Georgian authorities fully recognise that the AML Law now needs updating. On the basis of this Law, on 16 July 2003 a Financial Intelligence Unit was created (the Financial Monitoring Service - FMS) which began functioning (receiving reports) on 1 January 2004. In 2003 also a *Special Service on Prevention of Legalisation of Illicit Income* (*SSPLII*) was created at the General Prosecutor's Office of Georgia, which is responsible for the investigation of money laundering cases received from the FMS and from other sources. Since the second evaluation, money laundering cases have been brought to court and convictions achieved.

7. Organised crime and corruption remain major issues for the Georgian authorities to address. The main sources of illegal income are considered to be generated through smuggling, tax evasion, fraud, bribery, misappropriation and embezzlement, and abuse of power by public servants. In the second round report, casinos were thought to be a major money laundering vulnerability. Since then, many of them have been closed.

8. Various organised groups and also banking officials have been involved in money laundering cases which have been brought to court.

9. The AML Law covers a range of financial institutions and some but not all DNFBP, which are designated as "monitoring entities". The obligations of monitoring entities include some customer identification and record keeping requirements, requirements for internal control systems, and reporting requirements in respect of transactions "subject to monitoring". These are generally transactions or a series of transactions in excess of GEL 30,000 (i.e. 13,300 Euros). A suspicious transaction is defined in the AML Law as a transaction which, regardless of its amount, is supported by a grounded supposition that it had been concluded or implemented for the purpose of legalising illicit income or any person involved in the transaction is likely to be connected with a terrorist or terrorism supporting persons or the person's legal or real address or place of residence is located in a non-cooperative area and the transaction amount is transferred to or from such an area.

10. Further requirements have been made in various Regulations addressed to different categories of monitoring entities under Decrees issued by the Head of the FMS, who is authorised under the AML Law to issue normative acts on the conditions and procedures for receiving, systemising, processing and forwarding the information, and on identification of the entity.

11. The Georgian authorities could not identify any terrorist group operating on Government-controlled Georgian territory, but recognised that Georgia can be used as a transit country for terrorists. The Georgian authorities were conscious of the risks of abuse of the non-profit sector for financing of terrorism. One measure which had been taken in this regard was to make entities engaged in extension of grants and charity assistance "monitoring entities" under the AML Law.

12. The recommendation of the second evaluation team, that there should be put in place an effective system to detect the physical cross-border transportation of currency and bearer negotiable instruments, has hardly been addressed.

2. Legal Systems and Related Institutional Measures

13. The Georgian AML offence (Article 194 of the Georgian Criminal Code) follows, in principle, an "all crimes" approach. However, income from crime committed in the customs and taxation fields is excluded in the AML Law from the definition of illicit income, despite the fact that tax evasion remains a major source of illicit income. The Georgian authorities considered that Article 194, which does not contain this exemption, takes precedence over the AML Law. This contradiction between the legislative provisions should be addressed so that the restriction is clearly removed. Offences where the income is less than GEL 5,000 are not considered as predicate offences for the purposes of Article 194 CCG. This threshold should also be removed. As financing of terrorism was at the time of the on-site visit not a separate crime, terrorist financing in all its forms was not a predicate offence to money laundering. Insider trading, as it is generally understood, appeared not to be fully covered as a predicate offence, and should be.

14. The money laundering offence provides a broad range of dissuasive sanctions for natural persons, but in respect of legal entities no criminal, civil or administrative liability for money laundering is in place. This needs to be addressed.[3]

15. The ancillary offences of attempt, aiding and abetting, facilitating and counselling the commission of the money laundering offence appear to be adequately covered, but conspiracy (which is covered by the Georgian legal concept of "preparation") is only provided for money laundering in its aggravated forms.[4]

16. There were 15 defendants convicted of money laundering, and at least two significant terms of imprisonment imposed. Of the 15 convicted persons, 12 pleaded guilty. The issue of the level of proof required in respect of the predicate base in autonomous money laundering prosecutions had not been confronted. No autonomous money laundering prosecution has yet been brought in relation to foreign (or domestic) predicate offences. More emphasis needs to be placed on

[3] On 25 July 2006, the Georgian Criminal Code was amended to provide for the criminal liability of legal persons for specific offences, including Art 194 (money laundering).

[4] In an amendment to the Criminal Code, which came into effect after the on-site visit (July 2006), the basic penalty for money laundering was reduced to imprisonment to 2 - 4 years and the penalty provisions in respect of actions by a group, actions committed repeatedly and those involving generation of income in large quantities was reduced to 4 - 7 years and the actions committed by an organised group, by using one's official position and involving generation of income in extremely large quantities was reduced to 7 - 10 years.

autonomous money laundering prosecutions. The Georgian authorities should address the issue of the evidence required to establish the predicate criminality in autonomous money laundering cases by testing the extent to which inferences can be made by courts from objective facts. Most of the money laundering cases that have been investigated and prosecuted involved banking transfers by using offshore companies.

17. At the time of the third on-site visit, terrorism financing was not a separate crime in Georgian legislation. An autonomous offence of financing terrorism was being considered by Parliament. It was only possible to prosecute financing of terrorism on the basis of aiding and abetting (and other ancillary offences) connected with offences in the Georgian Criminal Code relating to terrorist acts. However, there have been no prosecutions for terrorist financing using any of the offences in the Georgian Criminal Code relating to terrorist acts or based on aiding and abetting principles. The Georgian authorities indicated that the methods and institutions used for terrorist financing purposes are similar to those used for money laundering. A fully autonomous terrorist financing offence should be introduced [5].

18. The Georgian legal framework covering provisional measures and confiscation has been significantly developed and now there is a basic legal structure in place for freezing, seizing and forfeiture of objects, instrumentalities and criminally acquired assets (proceeds) and for making value orders and for taking provisional measures to support such orders. Some of these provisions in the general criminal process were very new at the time of the on-site visit and it was clear that the practice of confiscation/forfeiture of all direct and indirect proceeds in major proceeds-generating cases was insufficiently embedded into the general criminal process. The Georgian authorities took the view that the new forfeiture provision in Article 52 (3) Criminal Code of Georgia is mandatory, but, in the absence of relevant practice, this cannot be confirmed. While there had been two significant value confiscation orders in money laundering cases, the effectiveness overall of the provisional measures and confiscation regime was questioned as more practice is needed in general criminal cases.

19. There are also some innovative administrative forfeiture provisions in place in special cases involving public officials and organised crime groups – which incorporate elements of the civil standard of proof, which are very welcome developments.

20. No assets have been frozen under the United Nations Security Council Resolutions. The lists received are notified by the FMS to the monitoring entities, but there was no clear legal structure for the conversion of designations into Georgian Law under UNSCR 1267 and 1373 or under procedures initiated by third countries. A Designating Authority is required for UNSCR 1373. Clarification is required that freezing should be without delay and not await the completion of transactions before UN and other lists are checked. Clearer guidance on these obligations is required. Publicly known procedures for considering de-listing and unfreezing, and for dealing with applications by persons inadvertently affected by these freezing mechanisms also need to be in place. All supervisors should be actively checking compliance with SR.III by monitoring entities

21. The FMS, which is an administrative type FIU, is the central body in the AML/CFT system of Georgia, and has the legal responsibility for reviewing the status of enforcement of the AML Law and the preparation of further legislative proposals and serves as the national centre for receiving, analysing and disseminating disclosures of STRs and other relevant information.

22. The arrangements to secure the operational independence of the FMS appear to be well balanced. The National Bank is responsible for the funding and the premises of the FMS. Funding by the

[5] Article 331[1] which provides for a separate offence of financing of terrorism was adopted on 25 July 2006 and was brought into force on 9 August 2006.

National Bank ensures that the FMS is not lacking technical and other resources, and is not directly reliant on central government in this regard. The NBG does not have the right to interfere with the professional work and responsibilities of FMS. The AML Law contains provisions stating that no permission is required from any organ or entity before transmitting materials to the Prosecutor. In addition, under the AML Law, no one shall have the right to "assign" (i.e. delegate) the FMS to seek for (obtain) any information.

23. The Head of the FMS is appointed by the President of Georgia, from a nomination by the National Bank (which ensures the professional expertise). The FMS is staffed with highly professional, technical experts who were selected with particular care. Currently 40 people work for the Georgian FMS. Importantly, the FIU has the confidence of the financial sector. The Head of the FIU has been in post since the creation of the FMS.

24. On 23 June 2004, the FMS became a member of the Egmont Group. It is now an active member of this organisation and co-operates effectively with all financial intelligence units, of whatever type.

25. From 1 January 2004 (when the FMS began functioning) till 24 April 2006, the FMS received 43,053 reports from monitoring entities, of which 1,313 were either sent or categorised as suspicious by FMS. 91 cases were opened by the FMS involving 17,511 reports above the 30,000 GEL threshold and 683 suspicious reports. After these analyses, the FMS forwarded, in total, 26 cases to the General Prosecutor's Office. The cases sent to the General Prosecutor were the subject of investigations and several resulted in prosecutions and convictions. The FMS' analytical work in processing cases can be regarded as quite effective. However, the overall efficiency of the FIU could be adversely affected by the limited scope of the suspicious reporting obligation in respect of terrorist financing, as Article 2 (h) of the AML Law limits this obligation to persons rather than funds.

26. The examiners consider that the reporting obligations (under SR.IV) need to be clarified to ensure that monitoring entities are clearly obliged to report where they suspect or have reasonable grounds to suspect that (licit or illicit) funds are linked or related to, or to be used for terrorism, terrorist acts, or by terrorist organisations or those who finance terrorism.

27. There are designated law enforcement bodies in place to investigate money laundering and terrorist financing with most investigative tools but the effectiveness of investigation / prosecution of money laundering has yet to be fully tested in respect of autonomous money laundering cases. Law enforcement and prosecutors need more guidance and training on the minimum evidential requirements to commence money laundering cases and greater training and familiarisation with the new forfeiture and seizure provisions, and on financial investigation techniques generally. Better and more detailed statistical information needs to be kept on money laundering and terrorist financing investigations, prosecutions and convictions.

28. The AML Law now makes customs a monitoring entity and they are specifically required to monitor the import and export of monetary units exceeding 30,000 GEL. At the time of the on-site visit, the obligations on customs under the AML Law were totally inoperable and inefficient. Only two reports had been made by Customs to the FMS and these were based on voluntary declarations. Customs was in the process of being reformed and in this on-going work urgent review is needed of their powers and responsibilities to enforce SR.IX as the borders remain very insecure.

3. Preventive Measures – financial institutions

29. The following financial institutions are monitoring entities: commercial banks, currency exchange bureaus; credit unions; brokerage companies, and securities registrars; insurance companies and non-state pension scheme founders. Postal organisations are included as financial institutions because they can carry out wire transfers. On the financial side, the Georgian AML legislation contains a basic customer identification obligation but the CDD requirements as set out in the FATF Recommendations are not yet fully implemented. In particular, there is no explicit legal requirement on financial institutions to implement CDD measures when:
    - carrying out occasional transactions that are wire transfers,
    - there is a suspicion of money laundering and financing of terrorism,
    - financial institutions have doubts about the veracity or adequacy of previously obtained customer identification data.

30. The concept of verification of identification should be further addressed. The Georgian authorities should take steps to apply an enhanced verification process in appropriate cases. They should consider requiring financial institutions to use in higher risk cases for the verification of the customer's identity not only the documents as currently prescribed by the AML Law but also to use *other* reliable, independent source documents, data or information.

31. A definition of "beneficial owner" within the meaning of the FATF Recommendations is not in the AML Law nor in FMS Decrees or in any other Georgian normative act. As a consequence, there are no legal requirements to take reasonable measures to determine the natural persons who ultimately own or control the customer or the person on whose behalf transactions or services are provided by financial institutions. Financial institutions should take reasonable measures to verify the identity of beneficial owners using other reliable source documents, data, or information.

32. Financial institutions should obtain information on the purpose and intended nature of the business relationship.

33. The scrutiny of transactions and the updating of identification data acquired during the CDD process should be undertaken as an ongoing process of due diligence on the business relationship and this requirement should be set out by the AML Law, in order to ensure that the transactions being conducted are consistent with the financial institutions' knowledge of the client.

34. The Georgian authorities should introduce a "risk based" approach in the AML/CFT legislation, that would require financial institutions to perform enhanced due diligence for higher risk categories of customer, transactions and products as described by the FATF Recommendations and to permit simplified or reduced CDD measures where the risks may be lower.

35. The Georgian authorities should, by enforceable means, take measures to cover the establishment and conduct of business relationships with politically exposed persons (PEPs), and should implement Recommendation 6. Neither has it implemented enforceable measures to cover the establishment and conduct of cross-border correspondent relationships as required by FATF Recommendation 7.

36. Georgia has not implemented Recommendation 8 through enforceable means. Financial institutions need to be required to have policies and procedures in place to prevent the misuse of technological developments for AML/CFT purposes, and to have policies and procedures in place to address specific risks associated with non-face to face transactions. It is understood, for example, at present that the Internet is not used for moving money from one account to another, but this and other non-face to face transactions may develop soon and policies need to be in place to guard against money laundering and financing of terrorism risks.

37. The AML Law only requires the maintenance of transactions "subject to monitoring" but not of all domestic and international transactions. The AML Law should require the maintenance of necessary records of all domestic and international transactions and not exclusively those transactions "subject to monitoring".

38. Although banks and Georgian Post are obliged under the AML Law to perform any transfer only after customer identification and record keeping (so far as it goes), there is no comprehensive legal framework addressing all the requirements as set out in SR VII in regard of commercial banks and the Georgian Post.

39. There is no clear and explicit requirement in the AML Law or other Regulation for financial institutions to analyse all complex, unusual large transactions or unusual patterns of transactions, that have no apparent or visible economic or lawful purpose beyond those transactions "subject to monitoring" under the AML Law.

40. Although the AML Law requires financial institutions to retain a hardcopy of the reporting form for no less than five years, there is not a specific requirement in the AML Law or in FMS Decrees, to set forth their findings on complex, large and unusual patterns of transactions, that have no apparent or visible economic or lawful purpose, in writing and to keep these findings available for at least 5 years

41. As regards internal control on AML/CFT, the AML Law defines some of the main elements that monitoring entities are required to include within the internal regulations, and requires monitoring entities to appoint an employee or a structural unit, who/which is responsible for reporting transactions "subject to monitoring" to the FMS. Clear provisions should be made for compliance officers to be designated at management level.

42. According to the explicit requirements of Recommendation 13, the AML Law should require financial institutions to report *promptly* to the FMS. The AML Law in its present formulation does not meet this requirement and should be reconsidered.

43. Despite that there is only very general guidance to most of the monitoring entities on what amounts to a suspicious transaction, the number of suspicious transaction reports has been rising since 2004, particularly in the banking sector. The FMS should satisfy itself that there is an even spread of reporting in the banking sector. It is important that more is done to explain the concept of suspicion to non-bank financial institutions. While brokerage companies and security registrars have begun reporting, it is notable that the exchange houses and insurance companies have made no suspicious transaction reports at all since the inception of the FMS. The FMS should actively pursue outreach to those financial institutions which are either not reporting or underreporting suspicious transactions. Financial institutions should receive guidance notes or instructions on how to determine whether a transaction is suspicious.

44. The STR regime should extend to suspicious transaction reports covering tax. A clear provision of general application should be introduced which covers tipping off, not just in respect of institutions but which also covers directors, officers, and employees and for which there is a clearly determined range of sanctions which can be imposed (whether criminal or administrative).

45. There is no clear requirement in law or regulation to ensure that financial institutions are obliged to report where they suspect or have reasonable grounds to suspect that funds of legal and physical persons (whether licit or illicit) are linked or related to, or to be used for terrorism, terrorist acts or

by terrorist organisations or those who finance terrorism (apart from transactions involving persons that are on terrorist lists).

46. Financial institutions are subject to different licensing regimes. However, the licensing requirements for money remittance services conducted outside the banking sector have been abolished. Any person currently can open a money or value transfer service. The Georgian authorities should reintroduce a licensing or registration system for such persons. The Georgian authorities should introduce a comprehensive and consistent legal framework on fit and proper criteria that applies to all currently regulated entities in the same way, which ensures that Recommendation 23 is satisfied. Fit and proper criteria should apply to all administrators and managers and significant shareholders.

47. Supervision of the financial sector is conducted by the National Bank of Georgia for banks, exchange bureaus and credit unions. For the insurance sector and securities the respective supervisors are the Insurance State Supervision Service of Georgia and the National Commission on Securities. Supervision of the postal organisations by the Ministry of Economic Development of Georgia had not commenced and needs to be brought into operation. Financial institutions that are subject to the Core Principles can be considered as under basically adequate regulation and ongoing supervision though the number of AML/CFT obligations that were specifically checked in inspections was not always clear. The statistics of on-site inspection need reviewing collectively and on a co-ordinated basis so that the Georgian authorities have a clearer picture of the level of AML/CFT compliance across the whole financial sector.

48. The overall policy on sanctioning is unclear. The AML Law appears to require that any violation of it, and normative acts adopted under it, should be sanctionable. However, sanctions are not defined in the AML Law. It is necessary to consider various sanctioning decrees to determine the types of infringement that attract sanctions and the types of penalty that can be imposed (e.g. the Decree for brokers does not cover financial sanctions). While *Bureaus de Change* have been sanctioned (particularly in respect of customer identification infringements) and some significant sanctions have been imposed on commercial banks (mainly for failure of reporting), the Georgian authorities should consider introducing a consistent, coherent and harmonised legal framework for imposing penalties (including financial penalties) across all supervisory laws and regulations on AML/CFT issues. The administrative sanctions regime should clearly extend to CFT issues.

4. Preventive Measures – Designated Non-Financial Businesses and Professions

49. The following DNFBP are defined as monitoring entities under the AML Law: casinos, dealers in precious metals, dealers in precious stones and notaries. Real estate agents, lawyers and accountants are not monitoring entities and thus no AML / CFT requirements apply. Trust and company service providers do not exist in Georgia and are also not covered by law or regulation.

50. Broadly, the main deficiencies that apply in the implementation of the AML/CFT preventive measures applicable to financial institutions regarding Recommendations 5, 6, and 8 to 11 and other preventive Recommendations apply also to DNFBP, since the core obligations for both DNFBP and financial institutions are based on the same general AML/CFT regime.

51. The CDD requirements applicable to casinos, dealers in precious metals, dealers in precious stones and notaries are established by the AML Law as well as by several regulations issued by the FMS. However, the effectiveness of the CDD requirements in respect of the DNFBP sector is insufficient or at least unknown (particularly regarding casinos and dealers in precious metals and stones). In respect of notaries, the implementation and supervision of existing standards is more advanced.

52. A clear provision is required that all necessary records on transactions shall be maintained. The existing one is limited (except for notaries) to suspicious transactions and all transactions exceeding 30,000 GEL.

53. Notaries are submitting transactions reports to FMS (of which 17 involved suspicious transactions). Casinos and dealers in precious metals as well as dealers in precious stones have not submitted any reports to the FMS. Thus, more outreach to this sector should be undertaken (including guidance provided by the FMS, together with the supervisory bodies, on indicators of suspiciousness).

54. The effectiveness of (the implementation of) the reporting requirements regarding casinos and dealers in precious metals and dealers in precious stones is questionable.

55. Although the number of casinos has reduced from 39 (as of 1 January 2006; before the entering into force of the new Law on Gambling and the introduction of an annual permit fee) to 2, these institutions are, as at the time of the last evaluation, considered high risk. Casinos are not licensed in a way which requires steps to be taken to ensure that criminals or their associates do not hold controlling interests or management functions. Fit and proper requirements should be applied to holders or beneficial owners of significant or controlling interests in casinos and those holding management functions, or being operators. Supervision of casinos is inadequate at present. The role of the Ministry of Finance, as the designated supervisor in AML/CFT measures, needs revisiting. The examiners consider that the Ministry of Finance should undertake a proactive programme of AML/CFT inspection without the need of a court order The Ministry of Finance has no power to sanction AML breaches, and this should be introduced.

56. Monitoring or ensuring compliance regarding dealers in precious metals and dealers in precious stones has not been implemented. In this area too, the examiners recommend that the Ministry of Finance should ensure that dealers in precious metals and dealers in precious stones are subject to effective systems for monitoring and ensuring their compliance with the AML Law. The Ministry of Finance needs to ensure that it has (adequate) powers to sanction for non-compliance with the AML Law.

57. At present, the supervision and monitoring of DNFBP is very limited. The notaries appeared to be the most engaged DNFBP with AML/CFT obligations. The Ministry of Justice carried out on-site inspections and a sanctioning system is in place. So far, no sanctions have been imposed.

58. Apart from financial institutions (including postal organisations), customs authorities and DNFPB as referred to in Recommendation 12, also entities organizing lotteries and commercial games (not being casinos); entities engaged in activities related to antiques and entities engaged in extension of grants and charity assistance are monitoring entities. The Ministry of Finance is appointed as supervisory body for these entities. Effective implementation of the AML/CFT requirements still needs to be achieved.

5. Legal Persons and Arrangements & Non-Profit Organisations

59. Georgian legislation covers entrepreneurial and non-entrepreneurial (non-profit) persons as well as legal persons of public law. According to the Law of Georgia on Entrepreneurs only the following legal arrangements can be established: individual enterprises, companies of joint responsibility, limited partnerships, limited liability companies, joint stock companies and cooperatives. Registration of companies is mandatory. A collective Entrepreneurial Register is kept by the Tax Department of the Ministry of Finance. Any person may have access to the register, and can request written extracts.

60. Non-profit organisations are regulated by the Georgian Civil Code and the Tax Code of Georgia. There are two types of non-profit organisations: funds (financial or property based organisations which are not based on membership), and associations (or unions) for the achievement of common goals. Associations cover a wide range of different activities e.g. sports organisations, professional associations, non governmental organisations in the field of human rights, environmental protection, and religious organisations. Charitable organisations are associations which have also been registered for charitable purposes. Both funds and associations are registered by the Ministry of Justice.

61. Though there are procedures in place to ensure some financial transparency, it appears there has been no special overall review of the adequacy of the current legal framework that relate to non-profit organisations that could be abused for the financing of terrorism. The Ministry of Finance should begin AML/CFT monitoring for entities engaged in extensions of grants and charity assistance. Consideration should be given to effective and proportionate oversight of the whole NPO sector. Closer liaison between the governmental departments involved is required and greater sharing of information between them and with law enforcement.

62. Georgia should review its commercial, corporate and other laws, with a view to taking measures to provide adequate transparency with regard to beneficial ownership.

6. National and International Co-operation

63. The AML Law contains provisions on cooperation both at domestic and international levels.

64. Mutual legal assistance is regulated by the Criminal Procedure Code of Georgia. In addition to the Vienna and Strasbourg Convention, the Georgian Parliament has ratified the European Convention on Mutual Assistance in Criminal Matters (ETS 030) and the Additional Protocol (ETS 99). The Second Additional Protocol (ETS 182) has not yet been signed. The Georgian Parliament has signed on 22 January 1993 the Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters among the Commonwealth of Independent States (CIS) and concluded several bilateral agreements/treaties which include provisions for exchange of information, documentary evidence, execution of warrants etc. for all kinds of criminal activities (including money laundering). If no agreement on mutual legal assistance is in place, decisions on mutual legal assistance can be made *ad hoc* by a special agreement between the Minister of Justice or the General Prosecutor with the corresponding officials of the foreign State. The average time for fulfilling requests is said to be 2-3 months. None of the received requests related to money laundering on financing of terrorism. Dual criminality is essential for rendering mutual legal assistance though it is not necessary that the action which is considered a crime in the requesting jurisdiction should have exactly the same characteristics in Georgian legislation. The examiners were advised that offences subject to requests are interpreted in a wide manner in order to provide assistance

65. The examiners had some concerns about the extent to which mutual legal assistance could be provided where compulsory measures are required and dual criminality is invoked particularly in respect of money laundering on the basis of tax and customs offences and those aspects of financing of terrorism not covered in domestic provisions.

66. Due to the amendments to the Criminal Code and Criminal Procedure Code as of December 2005, it now appears possible, on behalf of foreign countries, to seize, freeze, and forfeit objects, instrumentalities, direct and indirect proceeds, and to make confiscations on property and value based principles, and to take provisional measures to preserve the position in respect of both property and value based confiscations. If a foreign request for seizure or confiscation is accompanied by a court order, no further approval at a domestic level is required. If the request is

accompanied by any other type of authorisation than a court order (e.g. prosecutorial order), the investigator/prosecutor in Georgia would apply to the court to make an order based on the foreign request. However, these procedures were new and had not been tested.

67. According to Article 13 para 4 of the Constitution of Georgia, extradition of a Georgian citizen is not permitted, unless an international agreement states otherwise. However, according to Article 253 para 3 CPC the competent authorities of Georgia will pursue this Georgian citizen, if he/she, being on the territory of a foreign state, has committed an action, which would be considered as a crime according to the CCG, but has not been convicted by the court of the relevant state.

68. "Dual criminality" is a key principle for extradition. The Georgian authorities are of the opinion that, even though financing of terrorism was not "directly" criminalised, it would be possible to extradite a person for financing of terrorism as constituent elements are similar to other crimes provided by Georgian legislation. This has not been tested and, in any event, would not cover all aspects of terrorism financing. Thus, at the time of the on-site visit, not all aspects of financing of terrorism would appear not to have been extraditable.

69. At the domestic level the FMS is authorised to cooperate with supervisory and other authorities, provide them with information, and participate in drafting laws and other normative acts and discussions regarding the issues that regulate the economic sector and related authorities. The Law also obliges the supervisory bodies to collaborate with each other, and to assist law enforcement agencies within the scope of their competence. There are no specific rules for cooperation between the involved parties. During the on-site visit, no information about the effectiveness of coordination mechanisms (e.g. guidance documents; domestic MOUs; extent and types of information exchange) was available.

70. For the banking sector a "Special Coordination Group" was established between the FMS and the National Bank of Georgia to address issues related to the AML/CFT sphere. It thus appears that the authorities responsible for AML/CFT cooperate only on an occasional basis and that there are no mechanisms and rules concerning such a co-operation.

71. The FMS actively cooperates with all appropriate supervisory bodies, law enforcement agencies and other state institutions but during the on-site visit there were no statistics or information about such cooperation in practice available.

72. The examiners advise that the Georgian response to Recommendation 31 could be enhanced by a Co-ordination Group of Senior officials responsible for AML/CFT in each of the relevant sectors to assess the performance of the system as a whole and make recommendations as necessary to Government. It should ensure that those bodies yet to issue decrees to complete the regulatory framework proceed to issue them.

III. MUTUAL EVALUATION REPORT

1 GENERAL

1.1 General information on Georgia and its economy

73. Georgia is a country to the East of the Black Sea and lies at the crossroads of Europe and Asia. It has an area of 69,700 square kilometres. Its population was estimated in 2006 as 4,661,473. The national currency is the Georgian Lari.1 Euro is equal to 2,232 Georgian Lari or GEL.

74. Georgia is a sovereign Republic, which became independent of the USSR on 9 April 1991. It became a member State of the Council of Europe in 1999. The President of Georgia is elected by popular vote for a five year term. He is both the Head of State and commander-in-chief of Georgia. The legislative authority is exercised by the Parliament of Georgia. The members are elected by popular vote for a four year term. There is a written Constitution, and a Civil Law system. The Constitution recognises the independence of the Judiciary. There is a hierarchy for normative acts effective in Georgia set out in Article 19 of the Law on Normative Acts (annexed). At the highest level is the Constitution, and below that, *inter alia*, international treaties, Laws of Georgia, Regulations, Instructions etc. issued under Decrees. Regulations are considered as secondary legislation. The hierarchy of normative acts is considered further in Section 3 in the context of preventive measures.

75. After the national legislative elections in November 2003 and the resignation of President Eduard Shevardnadze (President since 1995), there were new elections in 2004. President Mikheil Saakashvili was elected.

76. The structural elements set out in paragraph 7 of the AML / CFT Methodology of 2004, which might significantly impair implementation of an effective AML / CFT framework are being addressed.

77. The fight against corruption and organised crime is complementary to the Georgian authorities' fight against money laundering. Tackling corruption has been the top priority since the current Government came to power. Georgia has been a member of the Council of Europe monitoring mechanism, the Group of States against Corruption (GRECO), since 16 September 1999. It has been evaluated twice by this mechanism. In the first evaluation it was pointed out that existing legislation required amendments to bring Georgia into line with the requirements of the Council of Europe Conventions on Corruption. It was recommended that Georgia redesign the roles of the different law enforcement bodies involved in the fight against corruption, improve the coordination between them, review the recruitment and management of public officials, and amend the system of immunities granted to different categories of officials. Georgia has taken steps to meet these recommendations. It has signed but not yet ratified the Council of Europe Criminal Law Convention on Corruption (ETS N. 173). Georgia has signed and ratified the Council of Europe Civil Law Convention on Corruption (ETS N. 174), which entered into force on 1 November 2003.

78. A national anti-corruption strategy in Georgia was adopted by Presidential Decree No.550 of 25 June 2005. The main pillars of the strategy, as explained to the evaluation team, are the reform

of the public service: *inter alia* by developing human resource policies, which include downsizing the public sector; increasing transparency – particularly in respect of the budgetary system; enhancing control of public administration; reform of public procurement regulation; institutional reform of the judiciary and of law enforcement bodies. An annual report on progress against this strategy is required to be published.

79. Reform of the Police was also an early priority of the new government, with the replacement of many police officers at various levels. The Georgian authorities advised the evaluators that they now consider that they have a police force which is respected by society generally. The President demanded an end to corruption in the Customs Service. Corruption in the Customs Service has been rigorously addressed through prosecutions, convictions and prison sentences. At the time of the on-site visit, Customs was reassessing its mission and developing a new Customs Code, with the help of international experts.

80. Reform of the judiciary and the courts has also been a high priority. Improvements have been made to the selection criteria for judicial office and a transparent system for judicial appointment has been elaborated. Long term training programmes for existing judges have been launched, and systems have been put in place to educate candidates for judicial office. Reforms have been made in both the management systems and financing of the courts. Case allocation across the court system has been reviewed and improved with a view to addressing delayed hearings. An integrated computer network for the court system has been created and initiatives have been taken to improve the quality of court paperwork and to ensure transparency and publicity of court cases.

81. Upon acceptance into the public service (and on a yearly basis thereafter) a public servant is now required to submit to the tax authorities information on his / her income and assets and those of his / her family members. So far as the examiners are aware, there is no specific ethical training provided to public servants yet, other than that which is in the general curricula for prosecutors and employees of the Ministry of Internal Affairs (Police). A Code for the Public Service generally is being developed. A Code of Ethics for prosecutors was approved by Order No. 5 of the Prosecutor General of Georgia on 19 June 2006. There is general training for the Police which covers ethical behaviour and respect for human rights. A draft Code of Ethics for police officers in the Ministry of Internal Affairs was in preparation at the time of the on-site visit.

82. The examiners were advised that for the large number of accountants practising in Georgia, no Code of Conduct is in place. The Georgian Federation of Professional Accountants and Auditors plans to replace the current Code of Ethics for Auditors (which was not provided in English translation) by a new Code of Ethics covering both accountants and auditors. The Georgian Bar Association adopted in April 2006 an Advocates' Code of Ethics, which is policed by the Bar Association.

83. After the new administration came to office governmental bodies were reorganised. The structures and conditions of public service have been improved. Specifically this initiative included the elaboration of a new pay system, the increasing of pensions and ensuring timely payment of salaries and the payment of pension arrears.

84. Initiatives have also been taken to develop enterprise and improve economic performance. The process of privatisation has continued, though the Georgian authorities indicated that 2006 was expected to be the final year of big privatisations. A strong deregulation policy was being pursued at the time of the on-site visit which included the removal of some administrative barriers for entrepreneurs, and simplification of the system for issuing licences and permits was being taken forward. A new Tax Code had been enacted. The number of taxes had reduced from 21 to 7 and this was accompanied by a significant reduction of tax rates.

85. Since 2003 the following trends have been observed:
    - a growth of GDP from 5.9 % in 2004 to 9.6 % in 2005;
    - a rising growth of State revenues:
      2003: GEL 1,239 million ($ 620 million)
      2006: projected GEL 3,069 million ($ 1,705 million);
    - a significant growth of direct investment (23% in 2005 compared with 2004 and 60% compared with 2003.);
    - an increase in exports by 36% in 2005;
    - more persons were registered as tax payers.

86. The Georgian authorities provided the following macroeconomic data:

	2003	**2004**	**2005**	**2006** (9 months)
Real GDP (% change)	11.1	5.9	9.6	8.6
CPI inflation (%)	4.8	5.7	8.2	9.0
Unemployment Rate (%)	11.5	12.6	13.8	13.8
General government balance (% of GDP)	2.1	1.3	0.2	0.7
Government gross Debt (%of GDP)	53.8	43.8	35.1	40.7

87. The Georgian authorities specifically drew the examiners' attention to a report by the World Bank and the International Finance Corporation (IFC)[6], which examines regulatory reforms in various regions of the world. Georgia, in 2005–2006, led the global top 10 reformer rankings on the ease of doing business. 175 economies were examined concerning regulations which enhance business activity and those that constrain it. It was noted that Georgia had improved in six of 10 areas. In addition to being the leading global reformer, Georgia was also the leading reformer in three of the specific areas studied by the report, namely dealing with licences, enforcing contracts and employing workers. It noted that business registration rose by 55 % between 2005 and 2006.

88. Progress on market reforms and democratisation, which has been made in the years since independence is, however, said by the Georgian authorities to have been complicated by two civil conflicts in the regions of Abkhazia and Tskhinvali. These two territories remain outside the control of the central government. The territory of Abkhazia is thought to be attractive for smuggling (including arms), and illegal circulation of drugs. The Georgian authorities advised, that in these regions Georgian legal acts (including laws regulating the functioning of the financial sector, fighting money laundering and combating the financing of terrorism) are not effective. It is said, that in these regions no normative regulatory acts on preventing, detecting and eliminating illicit income legalisation and terrorism financing are in place, and that this creates a favourable environment for uncontrolled movement of financial resources. The banking system of Abkhazia is said to operate in a completely autonomous manner. The Georgian authorities consider that in this region extensive money laundering practices are being conducted. The

[6] "Doing Business 2007: How to reform" (http://www.doingbusiness.org/documents/DoingBusiness2007_Overview.pdf).

evaluators have not visited these regions and cannot confirm the reported situation. This report only covers those parts of Georgia under Government control.

1.2 General situation of money laundering and financing of terrorism

89. To assess the progress that is now being made by the Georgian authorities in anti-money laundering and countering the financing of terrorism, it is necessary to recall the situation when Georgia first joined MONEYVAL. The first MONEYVAL (then PC-R-EV) on-site visit in Georgia took place in October 2000 and that report was adopted at the 8th Plenary meeting in December 2001. At the time of that evaluation, Georgia had no anti-money laundering preventive law, no suspicious transaction reporting regime or financial intelligence unit. Money laundering was a criminal offence, which had never been used. There was no real provisional measures and confiscation regime, partly as a result of perceived constitutional obstacles to confiscation. The 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (hereafter the Strasbourg Convention) had still to be signed, as well as ratified. The financial sector was underdeveloped. The economy was heavily cash based, though the process of transition towards a market economy had begun, with small and medium scale privatisations. The tax system was not functioning properly. There was no general binding obligation to identify customers or beneficial owners when the financial system was used. Anonymous accounts could still be opened. Law enforcement was hindered by very strict banking secrecy. At the time of the first on-site visit and at the time of the adoption of the first report, there had been little or no engagement by the Georgian authorities with the money laundering issue. There was a generally held view that in a largely cash-based economy, it was difficult to separate lawful from unlawful proceeds.

90. This on-site visit was followed by intensive dialogue with the Georgian authorities and in December 2002 the plenary of MONEYVAL decided that, unless Georgia enacted anti-money laundering preventive and other relevant legislation by the end of January 2003, which addressed concerns set out in a letter from the Secretary General of the Council of Europe to the Georgian authorities of 20/09/02, MONEYVAL would move to step 5 of its "compliance enhancing procedures"[7]. In March 2003 the Bureau of MONEYVAL reviewed the position and, as relevant amendments had not been considered by the Georgian Parliament, step 5 was invoked against Georgia.

91. Shortly before the second on-site visit, in May 2003, a High Level Mission to Georgia took place. The Council of Europe Delegation met all relevant Governmental officials, including the former President. The urgent need for compliance with basic standards was underlined. At the time of the second on-site visit (also in May 2003) little had changed since the first round report. The building blocks of an AML/CFT system had still to be put in place.

92. Shortly after the second on-site visit anti-money laundering preventive legislation was enacted and signed into law, on 6 June 2003 ("the Law of Georgia on Facilitating the Prevention of Illicit Income Legalisation" – hereafter the "AML Law"). Its provisions were brought into effect in January 2004. This law of June 2003 was subsequently amended by the "Law of Georgia on Changes and Amendments to the Law of Georgia on Facilitating the Prevention of illicit Income Legalisation, which was signed by President Saakashvili on 25 February 2004, all of which was brought into force either within 15 days from promulgation or in the case of S.4 (article 1) as

[7] At the 3rd Plenary of MONEYVAL in December 1998 a series of graduated steps to be taken in respect of member states not in compliance with the Committee's reference documents was adopted. The steps range from regular reporting back (step 1) to step 5 (requiring the arrangement of a high level mission to underline to the relevant Government the importance of compliance) and finally step 6 (a formal public statement in respect of non-compliance).

amended, from 1 September 2004. The Law on Amendments to the AML law is annexed with key laws, regulations and other measures.

93. The AML Law created an FIU (the Financial Monitoring Service of Georgia – FMS). The Law covers a range of financial institutions and some DNFBP. Both are designated as "monitoring entities". In respect of monitoring entities, there are obligations, which include some customer identification and record keeping requirements, requirements for internal control systems, and reporting requirements in respect of transactions "subject to monitoring". These are generally transactions or a series of transactions in excess of GEL 30,000 (i.e. 13,300 Euros), and transactions which evoke a suspicion, according to the definition of suspicious transaction in Article 2 (h) of the AML Law (which includes transactions connected to terrorists or terrorist supporting persons). "Monitoring" is defined in Article 2 (d) AML Law as the identification of an entity that is party to a transaction, and registration and systemisation of the information on the transaction and submission of such information to the FIU.

94. It was agreed by MONEYVAL in the context of the compliance enhancing procedures that the AML Law would be fully analysed in the third round evaluation. However, concerns about legislative gaps in the criminal procedure continued to be followed up under the compliance enhancing procedures until January 2006, when the Plenary accepted that legislation had been brought into force which made sufficient improvements to the provisional measures regime (the effectiveness of which would be assessed in the third evaluation round), and that Georgia could be removed from the follow-up process in respect of its first round report.

95. Turning to the crime situation, as noted, organised crime and corruption remain major issues for the Georgian authorities to address. The legalisation of illicit assets is still a major preoccupation of organised crime groups in Georgia. The major sources of illegal income are considered to be the same as at the time of the second evaluation. Illegal proceeds remain largely generated through smuggling, tax evasion, fraud, bribery, misappropriation and embezzlement, and abuse of power by public servants.

96. The Georgian authorities[8] provided the following general crime statistics for the years 2004 and 2005:

#	Crime		12 Months of 2004			12 Months of 2005			Changes of registered crimes in %
			Total Registered	Including		Total Registered	Including		
				Cleared cases	% of cleared cases		Cleared cases	% of cleared cases	
	Total amount of crime		24856	13016	52.4	43266	15975	36.9	74,07
1	Including	Less than grave	7023	5475	78.0	18946	8392	44.3	169,77
2		Grave	7786	3983	51.2	12750	4244	33.3	63,76
3		Extremely grave	10047	3558	35.4	11570	3339	28.9	15,16
4	Terrorism		3	1	33.3				-100,00
5	Gangsterism								
6	Forethought murder		281	181	64.4	403	201	49.9	43,42
7	Attempt of murder		257	159	61.9	294	183	62.2	14,40
8	Intentional infliction of damage to health		371	195	52.6	368	184	50.0	-0,81
9	Including	Specially grave	50	14	28.0	55	34	61.8	10,00
10	Rape		62	58	93.5	141	104	73.8	127,42
11	Illicit arrest		118	80	67.8	431	238	55.2	265,25
12	Including	Mercenary crime	49	22	44.9	88	35	39.8	79,59
13	Taking hostages		17	9	52.9	11	4	36.4	-35,29
14	Theft		10634	2860	26.9	16256	3467	21.3	52,87
15	Loot		1316	568	43.2	2087	642	30.8	58,59
16	Robbery		1733	633	36.5	1925	736	38.2	11,08
17	Fraud		427	349	81.7	1592	480	30.2	272,83
18	Extortion		61	46	75.4	167	74	44.3	173,77
19	Purchase, storage, carrying, transporting fire arms and ammunition		1238	1126	91.0	1242	939	75.6	0,32
20	Hooliganism		706	566	80.2	1314	870	66.2	86,12
21	Damage or destruction of an item		509	313	61.5	1338	710	53.1	162,87
22	Stealing cars		178	108	60.7	283	125	44.2	58,99
23	Violation of traffic rules or rules for use of transportation		905	560	61.9	2625	651	24.8	190,06
24	Crimes committed by underage		557			755			35,55
25	Illicit turnover of drugs		1941	1845	95.1	2074	1846	89.0	6,85
26	Crimes violating rules for environment protection and use of natural resources		428	378	88.3	500	291	58.2	16,82
27	Abuse of working position		238	176	73.9	344	87	25.3	44,54
28	Exceeding working powers		178	127	71.3	167	24	14.4	-6,18
29	Bribery		39	38	97.4	104	61	58.7	166,67
30	Fraud at work		63	52	82.5	103	39	37.9	63,49
31	Working negligence		108	77	71.3	137	25	18.2	26,85
32	Misappropriation		189	182	96.3	500	106	21.2	164,55
33	Falsification		30	29	96.7	47	8	17.0	56,67
34	Production, storage, selling, transportation of goods without excise marks		222	215	96.8	688	504	73.3	209,91
35	Counterfeiting and selling money and securities		26	16	61.5	82	26	31.7	215,38
36	Violation of customs rules		69	62	89.9	124	36	29.0	79,71
37	Tax evasion		248	237	95.6	49	12	24.5	-80,24
38	Disrespectful action against court		1	1	100	2	1	50.0	100,00
39	Destruction of evidence		2	2	100	4		0.0	100,00
40	Concealing of crime		13	13	100	17	12	70.6	30,77
41	Crime against military service		212	209	98.6	636	587	92.3	200,00
42	Other		2033	1545	76.0	7211	2702	37.5	254,70

[8] Source: Department of Information Dissemination and Analysis, Ministry of Internal Affairs, 15 June 2006.

97. The present examiners were advised that since the second evaluation 22 defendants had been prosecuted for money laundering, of which 15 were convicted. The Georgian AML offence (Article 194 of the Georgian Criminal Code) follows, in principle, an "all crimes"-approach. However, income from crime committed in the customs and taxation fields appears not to be covered (discussed beneath in section 2.1) despite the fact that tax evasion remains a major source of illicit income. Offences where the income is less than GEL 5,000 are not considered as predicate offences for the purposes of Article 194 CCG.

98. Predicate offences to money laundering are often known to be committed beyond the borders of Georgia. However no autonomous money laundering prosecution has yet been brought in relation to foreign predicates. Most of the money laundering cases that have been investigated and prosecuted involved banking transfers by using offshore companies. Various organised groups and also banking officials have been involved in money laundering activities. In one money laundering case, which was investigated and prosecuted since the second round evaluation, an organised group included family members that were engaged in money laundering operations.

99. The most common institutions used for money laundering other than banks are considered to be insurance companies, brokerage companies and exchange bureaus. In the second round report casinos were thought to be a major money laundering vulnerability, though many of them have since been closed down. The major source of reports to the FIU is the banking sector.

100. Turning to terrorism-related issues, the Anti-Terrorist Centre in the Ministry of Internal Affairs (which formerly was a division of the Ministry of State Security) indicated that they could not identify any single terrorist group operating on Government-controlled Georgian territory, but recognised that Georgia can be used as a transit country for terrorists. The Anti-Terrorist Centre advised that they had officers on duty 24 hours at border crossings. The Georgian authorities were conscious of the risks of abuse of the non-profit sector for financing of terrorism. The Ministry of Internal Affairs had monitored and been instrumental in the closing down of one school / study group which was obtaining funds from foreign organisations abroad. This sector is monitored overall by this Ministry, in collaboration with the Ministry of Justice, which is responsible for civil registration. The financial affairs of the NPO sector are controlled by the tax authorities (see 5.3 beneath). At the time of the on-site visit, terrorism financing was not a separate crime in Georgian legislation. It was only possible to prosecute financing of terrorism on the basis of aiding and abetting (and other ancillary offences) connected with offences in the Georgian Criminal Code relating to terrorist acts (e.g. Article 327 "Formation of a Terrorist Organisation, or Participation therein" and Article 328 "Accession and Assistance to Terrorist Organisation of a Foreign State"). The evaluators were advised that a separate offence of financing terrorism was being considered by Parliament[9]. Since the enactment of the AML Law, which also addresses in part financing of terrorism, the FMS has received three reports relating to cases of possible terrorism financing, though the FMS indicated that they had forwarded a total of 10 such cases to the Prosecutor General's Office (the remaining 9 being as a result of views formed by their own analyses). There have been no prosecutions for terrorist financing using any of the offences in the Georgian Criminal Code relating to terrorist acts or based on aiding and abetting principles. The Georgian authorities indicated that the methods and institutions used for terrorist financing purposes are similar to those used for money laundering.

[9] Article 331[1] which provides for a separate offence of financing of terrorism was adopted on 25 July 2006 and was brought into force on 9 August 2006.

1.3 Overview of the financial sector and Designated Non-Financial Businesses and Professions (DNFBP)

Financial Sector

101. The financial sector primarily comprises banking, insurance and securities:

Banking sector
- commercial banks;
- non-banks depositary institutions (credit unions);
- currency exchange bureaus;

Insurance sector
- insurance organisations;
- founders of non-state pension schemes;

Securities sector
- broker companies;
- securities registrars.

102. As postal organisations carry out wire transfers they are categorised as financial institutions. At the time of the on-site visit, the Georgian Postal Organisation was the unique postal organisation that provided money transfers.

Banking sector

103. Commercial banks' activities are mainly regulated under the Law of Georgia on Activities of Commercial Banks and the Law on the National Bank of Georgia. The National Bank of Georgia (NBG) adopts normative acts (so called Decrees) to regulate these entities. According to the Law of Georgia on Activities of Commercial Banks, commercial banks are established as joint-stock companies. The licence for establishing a bank is granted by the National Bank of Georgia (NBG) which also supervises their activities. The licences are issued for an unlimited term and are effective on the whole territory of Georgia. The transfer of such a licence to another person is prohibited. If obligations defined under the Law are not fulfilled, the licence can be revoked, based on the NBG's decision. A licence is also required for branches of foreign banks to operate in Georgia.

104. Commercial banks are permitted to perform the following activities:

- Receiving interest-bearing and interest-free deposits and other returnable means of payment;
- Extending consumer loans, mortgage loans and other credit, both secured and unsecured, and engaging in factoring operations, trade financing including the granting of guarantees, and letters of credit;
- Buying, selling, paying and receiving monetary instruments: notes, drafts and checks, certificates of deposit, as well as securities, futures, options and swaps on debt instruments, currencies, foreign exchange, as well as precious metals and precious stones;
- Cash and non-cash settlement operations and the provision of collection services;
- Issuing money orders and managing money circulation (including tax cards, checks and bills of exchange);

- Brokerage services on the financial market;
- Trust operations on behalf of clients, attracting and placing funds (see paragraph beneath);
- Safekeeping and registration of valuables including securities;
- Credit information services;
- Activities incidental to each of the above types of services.

105. At the time of the third on-site visit, trust operations were not carried out by the commercial banks operating in Georgia. The Georgian Authorities have not signed the Convention of 1 July 1985 on the Law Applicable to Trust and on their Recognition.

106. The National Bank of Georgia supervises the activities of the commercial banks, including the implementation of the provisions of the AML Law.

107. At the end of 2005, 19 commercial banks were operating in Georgia, of which 12 worked with majority foreign capital (including 2 branches of Turkish and Azerbaijani banks). There are no state owned banks. As of April 2006, the European Bank for Reconstruction and Development (EBRD) held shares in 3 commercial banks, and the International Financial Corporation (IFC) held shares in 2 commercial banks. Also Russian, Armenian and Kazakhstan banks have subsidiaries in Georgia. The table beneath illustrates the ownership structure of commercial banks in Georgia:

	Apr-06	Dec-05
Resident Shareholders 100%	7	7
Foreign ownership more than 50%	10	10
Foreign ownership less than 50%	0	0
Foreign Branches	2	2
Total number of banks	19	19

108. In 2003 the limitation on total capitalisation for an individual was 25 % under the Law of Georgia on Activities of Commercial Banks. However, this restriction was lifted in 2006, and currently there is no restriction on individual shareholdings.

109. The banks are considered to be the driving force in the whole financial sector. The Georgian authorities provided the following table showing the total assets, loans and deposits of the commercial banks in relation to the GDP of Georgia.

	2005 (in million GEL)	**% of GDP**
GDP	11 621	
Assets	2 548	21.9%
Loans	1 730	14.9%
Deposits	1 538	13.2%

110. Non-resident deposits in Georgian banks amounted to 13,9 % of total deposits in 2005 and 10,3 % of total deposits in 2006. The NBG keeps a list of all resident and non-resident shareholders in licensed commercial banks.

111. At the end of 2005, assets held by commercial banks totalled 2 548 million GEL (1 141 million Euros[10]) as summarised in the table beneath:

Items	**Amounts (in million GEL)**
Capital owned by banks (i.e. shareholders equity)	479 *(214 m Euros)*
Deposits and Due to banks	1 538 *(689 m Euros)*
Borrowing	453 *(202 m Euros)*
Gross Loans	1 730 *(775 m Euros)*
Portfolio (equity investments)	23 *(10 m Euros)*
Cash and Due from banks	615 *(275 m Euros)*
Total Assets	2 548

112. According to the statistics provided by the National Bank of Georgia, as of March 31, 2006, the commercial banks invest their loan portfolios as follows:
- retail and service sector – approximately 665 million GEL,
- individuals - approximately 515 million GEL,
- mining and mineral processing sector - approximately 218 million GEL,
- construction sector - approximately 139 million GEL.

113. The Law of Georgia on Activities of Non-bank Depository Institutions and the Law on the National Bank of Georgia govern the activities of non-bank depository institutions (credit unions). As with the commercial banks, the NBG issues Decrees, which regulate the activities of the Credit Unions. While commercial banks can only be established in the organisational form of joint-stock companies, credit unions can only be established in the form of cooperatives. The NBG also supervises the activities of credit unions, which, in addition to compliance with licensing requirements, covers all types of inspections, the imposition of restrictions and sanctions, including governance and liquidation through temporary administration.

114. At the time of the on-site visit, 42 non-bank depository institutions/credit unions were registered in Georgia. They are entirely owned by Georgian individuals and located in rural areas.

115. Credit unions are authorised to perform the following activities:
- attract deposits only from its members;
- extend loans only to its members;
- engage in investment activities in accordance with the requirements of the law and regulations of the NBG;
- render services related to the above activities, including loan commitments.

116. Under Decree No. 257 of 8 October 2002 "Regulation on Application of Sanctions against Non-Bank Depository Institutions – Credit Unions" of the NBG, amended by Decree N. 122 of June 15, 2004, the NBG is empowered to detect potential weaknesses and to correct violations, and to take appropriate measures when supervising credit unions. These same regulative acts define the relevant sanctions to be taken against credit unions (and other entities supervised by the National Bank of Georgia) for the violation of the requirements of the AML Law.

[10] As noted, 1 Euro = 2,232 GEL.

117. The NBG is also authorised to supervise the activities of currency exchange bureaus. This encompasses issuing, and revocation of licences and imposition of sanctions (Organic Law on the National Bank of Georgia). The transfer of a licence to another person is prohibited. The licences are issued for an unlimited term. In addition, the NBG issues normative acts, which regulate activities of currency exchange bureaus. According to Decree No. 9 of January 11, 2006 of the President of the National Bank of Georgia on Regulation on Licensing and Supervising of the Activities of Currency Exchange Bureaus, only physical persons and non-bank legal entities can open currency exchange bureaus. This Decree also regulates the supervisory activities of the NBG over these financial institutions. As a consequence, the NBG created a "Non-Banking Division" which is responsible for supervising the activities of currency exchange bureaus. The evaluators were informed that, at the time of the third on-site visit, 588 licensed currency exchange bureaus were operating in Georgia, of which 435 were operated by physical persons (individual entrepreneurs) and 153 by legal entities. Currency exchange bureaus are permitted to perform currency trading operations only in cash. The evaluators were informed that currency exchange bureaus were mainly used by Georgians to exchange money received from their relatives living abroad. Currency exchange bureaus remain a money laundering vulnerability.

Insurance sector

118. The activities of insurance organisations and founders of non-state pension schemes are governed by the Law on Insurance and Law on Non-State Pension Schemes, as well as their respective regulations. The insurance organisations and founders of non-state pension schemes are licensed, regulated and supervised by the State Insurance Supervision Service of Georgia. Insurance activities can be performed only on the basis of a licence. The licence shall clearly specify the type of insurance which the insurer is entitled to provide. An insurance activity licence shall be issued to a specific legal person (limited liability companies and joint stock companies). The transfer of such a licence to another person is prohibited. The licences are issued for an unlimited term and are effective on the whole territory of Georgia. The State Insurance Supervision Service of Georgia has the right to suspend or revoke a licence. The decision of the State Insurance Supervision Service of Georgia on suspending (as well as resuming) or revoking a licence is published in an official newspaper.

119. Currently 16 insurance organisations operate in Georgia[11], of which 5 perform functions as founders of non-state pension schemes. In addition, the National Bank of Georgia has a special licence, on the basis of which it has established a non-state pension scheme exclusively for its employees.

120. The objectives of insurance activities are:
a) personal insurance when related to life, health, pension security etc;
b) wealth insurance and land reinsurance;
c) property insurance when related to ownership of, disposition of and usage of property;
d) insurance related to damage inflicted by an insured person to a third party.

121. The evaluators were informed during the on-site visit that some companies operating in this sector belong to commercial banks.[12]

[11] At the time of the adoption of the draft report, in February 2007, 14 insurance organisations were operating in Georgia.

[12] At the time of the adoption of the draft report, in February 2007, 6 Insurance Companies were subsidiaries of commercial banks.

Security market

122. The Law of Georgia on the Securities Market mainly governs the activities of brokerage companies and securities registrars. The National Commission on Securities of Georgia issues regulations and is the supervisory authority for this sector. The activities of brokerage companies and securities registrars are subject to mandatory licensing. Licences are issued by the National Commission on Securities. The Commission may issue a general licence, according to which a brokerage company can engage in all permitted activities, or special licences, which gives the right to the company only to perform certain activities. A licence can be issued only to legal entities registered in the form of limited liability companies or joint-stock companies. The Commission is authorised to suspend and revoke licences of brokerage companies and securities registrars. At present 16 brokerage companies and 8 registrars operate in Georgia.

Designated Non-Financial Businesses and Professions (DNFBP)

Casinos

123. In April 2006, two casinos were operating in Georgia. Gambling institutions (including casinos) are regulated by law. The evaluators were informed that there are no servers for internet casinos in Georgia and that there is also no permission to open internet casinos. The current legislation (Law of Georgia on Organizing Lotteries, Gambling and other Prizewinning Games) was adopted on 25 March 2005 (and was amended on 25 May 2006). The Ministry of Finance is the Permit issuing authority, as well as the general regulatory and supervisory body for casinos. Additionally, under FMS Decree N. 94 it is responsible for the supervision of compliance of casinos with the norms and requirements set out in the AML Law and the FMS regulation issued under the Decree. After adoption of the current law regulating these activities, 37 casinos ceased their activities as the annual permit fee for operating a casino is currently quite high (GEL 5 million). Exemptions were made for two tourist areas: Batumi (reduced fee of GEL 1 million) and Tskaltubo (no permit fee required). In April 2006, 450 slot machines providers, 253 totalisators and 42 organisers of other commercial games were operating in Georgia.

Real estate agents

124. In 2006, 26 real estate dealers were operating in Georgia (including 10 individual entrepreneurs and 16 legal entities). The profession is currently neither regulated nor supervised and real estate agents are not monitoring entities, under the AML law.

Dealers in precious metals and stones

125. At the time of the on-site visit, 100 dealers in precious metals and stones were operating in Georgia (90 individual entrepreneurs and 10 legal entities). Since the abolition of the Law of Georgia on State Control, Analysis and Marking Precious Metals and Precious Stones, on 25 November 2004, the business is no longer regulated or supervised. As a result of being a monitoring entity, the general requirements of the AML Law are applicable to dealers in precious metals and stones, including customer identification, record keeping and the obligation to reveal transactions subject to monitoring.

Lawyers

126. The activities of lawyers are regulated by the Law on Advocates, which also provides rules for admission to the profession. Membership of the Georgian Bar association is compulsory for practising advocates. Advocates can be disciplined or even disbarred by the Ethics Commission of the Bar Association for breaches of the Law or the Code of Ethics. In April 2006 the Georgian Bar Association had 953 members. The activities of Georgian Lawyers also involve: the buying and

selling of real estate, cash and securities management and establishing legal persons. However, lawyers are not monitoring entities under the AML Law.

Notaries

127. Notaries perform public duties and are regulated by the Law on Notary Service, which also provides rules for admission to the profession. Membership of the Georgian Chamber of Notaries is obligatory. The Ministry of Justice is the licensing authority and the regulatory and supervisory body for the notaries. Notaries can be removed from office or suspended by the Ministry of Justice. In April 2006, 231 notaries were operating in Georgia. The activities of Georgian Notaries also involve obligatory participation in buying and selling of real estate. As real estate transactions have to be notarised, all such activities are reported to the FMS via the notaries, if the amount is over GEL 30,000 or suspicious.

Auditors and accountants

128. Auditors are regulated by the Law on Auditing Activities. A licence is no longer necessary. In May 2006 approximately 700 auditors (around 500 natural persons and 200 legal persons) were operating in Georgia and are members of the Auditors Association. In Georgia the number of accountants is unclear. It is thought to be around 100,000, though only 2,100 are officially registered as members of the Accountants Federation. Accountants are not monitoring entities and not covered by AML / CFT obligations (as required by FATF Recommendation 12, in respect of enumerated activities, and under the European Union Directives). Auditors are not monitoring entities and are not covered by AML / CFT obligations, as required under the European Union Directives.

Trust and company service providers

129. Currently trust and/or company service providers do not exist in Georgia and, as a result, are not covered as monitoring entities and have no AML / CFT obligations of the type covered by the FATF Recommendations and the European Union Directives.

1.4 Overview of commercial laws and mechanisms governing legal persons and arrangements

130. Georgian legislation covers entrepreneurial and non-entrepreneurial (non-profit) persons as well as legal persons of public law. According to the Law of Georgia on Entrepreneurs the following legal arrangements can be established: individual enterprises, companies of joint responsibility, limited partnerships, limited liability companies, joint stock companies and cooperatives. Companies of joint responsibility, limited partnerships, limited liability companies, joint stock companies and cooperatives are legal persons, while individual entrepreneurs are physical persons.

131. Registration of companies is mandatory. An enterprise can be established immediately after registration. The registration process is performed by the local competent tax agency. A collective Entrepreneurial Register is kept by the Tax Department of the Ministry of Finance. Any person may have access to the register, and can request written extracts.

132. In addition to entrepreneurial (commercial) legal persons, Georgian legislation also provides regulations for non-entrepreneurial legal entities. This issue is regulated by the Civil Code of Georgia. Legal persons, who do not conduct entrepreneurial activities operate as unions (associations) or funds. Registration of funds and unions is carried out under the supervision of the

Ministry of Justice. For registration, the charter and application signed by all shareholders and directors has to be submitted.

133. Georgian legislation also provides rules for establishing legal entities of public law. This process is regulated by the Law on Legal Entity of the Public Law. According to this law, a legal entity of the public law is an organisation separated from state governance bodies, which independently carries out political, state, social, educational, cultural and other public activities. Legal entities of public law may also be jointly established by several state governance bodies.

1.5 Overview of strategy to prevent money laundering and terrorist financing

a. AML/CFT Strategies and Priorities

134. Currently Georgia's priorities in the field of preventing money laundering and terrorism financing are said to be:

- Addressing corruption (and related money laundering) through investigation and prosecution and confiscation, and significant disruption of the activities of organised crime (in this regard new administrative confiscation provisions were introduced in 2005);
- Further improvement of the legislative framework and harmonisation with international norms (improvement of legislation regulating AML/CFT measures, know-your-customer (KYC) measures;
- Preparing further implementing norms and Decrees pursuant to the AML/CFT legislation;
- Further evaluation of the AML/CFT risk levels in various parts of the financial sector;
- Raising qualification requirements and standards of the employees in the different organisations and units which are involved in the AML/CFT process (e.g. FIU, supervisory bodies, monitoring entities, the special unit at the General Prosecutor's Office handling most money laundering cases , and the judges).

b. The institutional framework for combating money laundering and terrorist financing

135. The following are the main bodies and authorities involved in combating money laundering or financing of terrorism on the financial side:

The National Bank of Georgia (NBG)

136. The organic Law of Georgia "on the National Bank of Georgia" defines the NBG's main functions. It is the central bank of Georgia, and the banker and fiscal agent of the Georgian Government. It ensures the elaboration and implementation of monetary policy and supervision over the activities of the commercial banking system, including some non-banking institutions, such as exchange offices and credit unions. Provisions dealing with regulation of these entities are found in the Law of Georgia "on Activities of Commercial Banks" and Law of Georgia "on Non-banking Deposit Institutions – Credit Unions".

137. The NBG has developed a methodological manual for the inspection of commercial banks covering money laundering aspects. A special department of the NBG conducts on-site inspections of commercial banks based on these rules. As noted, rules for inspection of credit unions have also been developed. The National Bank does not require any court decision to inspect entities under its supervision.

138. The National Bank also issues licences to branches of foreign banks. These branches are inspected by NBG examiners or appointed auditors, according to the same procedures as resident banks. In this respect, the NBG closely cooperates with relevant foreign supervisory authorities for bank and non-bank depository institutions.

Ministry of Internal Affairs

139. The Ministry of Internal Affairs is responsible for maintenance of public order and state safety. In February 2005, the Ministry of State Security merged with the Ministry of Internal Affairs. At present, the Ministry of Internal Affairs is entrusted with responsibilities for fighting both terrorism and crime generally. It created a special *Anti-Terrorist Centre* which is responsible for conducting operative activities for the prevention of terrorism and the investigation of terrorism cases. This special Anti-Terrorist centre is staffed with 35 people, who have considerable experience in investigative work. It exchanges information with other countries and is also closely linked with other relevant institutions in Georgia for the purpose of exchange of information (particularly the FIU).

140. The *Special Operative Department (SOD*) of the Ministry of Internal Affairs is entrusted with the responsibility to fight organised crime, trafficking of drugs, arms and human beings. In 2005, a Special Operative Unit to fight money laundering was created within this department which is also required to provide operative support to the *Special Service on Prevention of Legalisation of Illicit Income* at the General Prosecutor's Office of Georgia during the investigation of money laundering cases and, as such, conducts "operative-search activities" for evidence gathering, and can investigate the financial background of suspects and defendants in cases.

Ministry of Justice

141. The Ministry of Justice is responsible for drafting and elaboration of legislation. Together with the General Prosecutor's Office of Georgia, the Ministry of Justice is responsible for the provision of international legal assistance in the criminal and civil spheres. It also deals with the registration of non-commercial entities (funds and unions) and political parties, as well as the maintenance of the Public Register. It is the supervisory body for notaries. The Ministry of Justice also maintains a register of Non-profit Organisations (funds and unions).

The Public Prosecution Service

142. The task of the Prosecutor's Office is to perform criminal prosecution, direct preliminary investigation, supervise the legality of investigation and direct the whole investigation and prosecution. The General Prosecutor has investigative as well as prosecuting functions.

143. The prosecutors' offices of Georgia are structured as follows:
- General Prosecutor's Office of Georgia,
- Regional Prosecutor's Offices ,
- District Prosecutor's Offices ,
- Tbilisi City Prosecutor's Office,
- Prosecutor's Office of the Autonomous Republic of Adjara.

144. At the end of 2003, the *Special Service on Prevention of Legalisation of Illicit Income* (*SSPLII*) at the General Prosecutor Office of Georgia was created. This Service is responsible for the investigation of cases initiated under Article 194 of the Criminal Code of Georgia (the "Money Laundering offence"), both at the stage of investigation and at trial. Its jurisdiction covers the entire territory of Georgia under Government control, and this Special Service has no branches in the regions. The prosecutors at the Special Service are granted investigative functions. This Service is equipped with modern technical facilities. The *Investigative Department* at the General Prosecutor's Office can also deal with money laundering cases delegated to it, though the primary responsibility for money laundering cases lies with *SSPLII*. The Investigative Department is responsible for investigations, including some financial investigations and corruption offences. Like the *SSPLII*, it has jurisdiction over the whole territory of Georgia.

145. The *Legal Provision Department of the General Prosecutor's Office* is (together with the Ministry of Justice) responsible for rendering mutual legal assistance and extradition procedures.

Ministry of Foreign Affairs

146. The Ministry of Foreign Affairs of Georgia is responsible for the management and coordination of Georgia's relations with foreign states and international organisations. It implements foreign political and economic policy as determined by the Parliament of Georgia and pursued by the President of Georgia, in compliance with the Georgian legislation and international commitments of Georgia. It receives designations under United Nations Security Council Resolutions 1267 (1999) and 1373 (2001) and forwards them to the National Security Council, the FIU and the Ministry of Internal Affairs. It is also involved in the Georgian extradition framework.

Ministry of Finance

147. The Ministry of Finance manages the budget and State finances, and State debts and has a supervisory role for several monitoring entities covered by the AML Law. Under the Law of Georgia on Organising Lotteries, Gambling and other Prizewinning Games, the Ministry of Finance issues permits to gambling businesses and casinos; it is responsible for general supervision of casinos and, as noted, has been charged with AML/CFT supervision under FMS Decree N. 94 (Annex 24). Furthermore, the Ministry of Finance is under Article 4 of the AML Law the supervisory body concerning AML/CFT issues for entities engaged in activities related to precious metals, precious stones (and products thereof) and antiquities, as well as for entities engaged in extension of grants and charity assistance. In these cases the Ministry of Finance has yet to establish arrangements for monitoring effective compliance of AML /CFT requirements. The Ministry of Finance is the competent body for removing the status of charitable organisations, where required.

148. The Customs, Tax Department and Financial Police operate under the Ministry of Finance. The Tax Department keeps a unified Entrepreneurial Register and a register of all charitable organisations. The Financial Police is able to conduct preliminary investigation into and take other measures to fight economic crime. According to Article 62 CPC, the Financial Police's investigative jurisdiction can cover such crimes as misappropriation and embezzlement, violation of copyright, illegal entrepreneurial activity, false entrepreneurship, monopoly, violation of customs rules, violation of the currency circulation rules, tax evasion and commercial bribery and theoretically Article 194 CCG (the money laundering-offence) although the evaluators were not advised of any such cases because, as noted, the primary jurisdiction for the investigation and prosecution of money laundering offences is the *Special Service on Prevention of Legalisation of Illicit Income* (*SSPLII*) at the General Prosecutor's office and the special unit in the *Special Operative Department (SOD*) of the Ministry of Internal Affairs. The General Prosecutor's office exercises supervision over any investigation conducted by the Financial Police of Georgia.

Customs

149. Customs exists as a Department under the Ministry of Finance. Customs implements the Customs Code and is charged with the detection of breaches of it. Customs is also charged with monitoring cash movements across the borders of Georgia.

Judiciary

150. The judges are appointed by the President of Georgia on the recommendation of the Council of Justice of Georgia. The Judiciary is regulated by the Organic Law of Georgia "on General

Courts of Georgia". At present, the Georgian judiciary system consists of Regional (City) Courts, Courts of Appeal and the Supreme Court of Georgia. Regional (city) courts as well as courts of first instance are entitled to deal with hearings of criminal cases (including money laundering cases). Challenges to convictions/decisions taken by Regional (City) Courts are considered by Courts of Appeal. A Chamber of the Supreme Court of Georgia considers challenges to convictions/decisions taken by the Courts of Appeal.

Financial Intelligence Unit (FIU)

151. The Financial Monitoring Service (FMS) has the status of a Financial Intelligence Unit in Georgia. It was established on the basis of the Law of Georgia on Facilitating the Prevention of Illicit Income Legalisation (the AML Law), under the Ordinance N 354 of the President of Georgia "on Establishing the Legal Entity of the Public Law – Financial Monitoring Service of Georgia" and Article 74^1 of the Organic Law on the National Bank of Georgia. It is an administrative type of FIU and was established at the National Bank of Georgia. The FMS receives, collects, analyses and transmits information in accordance with the AML Law. It began functioning on 1 January 2004.

152. The Service is an independent organisation separated from state governance bodies.

The National Security Council (NSC)

153. The National Security Council of Georgia, as a Committee, is chaired by the President of Georgia and includes the Prime Minister and relevant Ministerial colleagues. Other authorities can be invited to its meetings. It has a strategic policy-making, co-ordinating and monitoring role in areas of State security. It is *inter alia* one recipient of the designations under the United Nations Security Council Resolution 1267 and 1373. The NSC is supported by the office ("apparatus") of the National Security Council with a staff of 10 persons, split between 2 departments: state security and coordination of activities.

c. The approach concerning risk

154. According to the FATF Recommendations, a country should apply each of the CDD measures under Recommendation 5 (a)-(d) but may determine the extent of such measures on a risk sensitive basis depending on the type of customer, business relationship or transaction..

155. The Georgian AML Law covers all financial institutions as defined in the Glossary of definitions used in the 2004 AML/CFT Methodology except collective portfolio management (as the evaluators were advised that this type of service does not exist in Georgia). Some DNFBP are covered in the AML law: casinos (but internet casinos are not specifically provided for); dealers of precious metals and stones and notaries. No risk-based approach is followed in the AML Law, except the adoption of the GEL 30,000 threshold for transaction monitoring. The monitoring entities are not in a position to adopt a risk-based approach themselves as the AML Law is strictly rule-based.

d. Progress since the last mutual evaluation

156. Since the last evaluation there have been major changes, some of which have already been touched upon. The basic building blocks of an AML/CFT system are now broadly in place. However, the recommendation of the second evaluation team, that there should be put in place an

effective system to detect the physical cross-border transportation of currency and bearer negotiable instruments, has hardly been addressed. The borders remain dangerously exposed.

157. On 6 June 2003 the Parliament of Georgia passed the AML Law. The law regulates and defines important principles in the sphere of prevention of money laundering and terrorism financing, though the Georgian authorities fully recognise that the AML Law needs updating to reflect the developing standards in the 2003 FATF Recommendations, as interpreted in the 2004 AML/CFT Methodology.

158. On 16 July 2003 under the Ordinance N 354 of the President of Georgia "on Establishing the Legal Entity of the Public Law – Financial Monitoring Service of Georgia", a Financial Intelligence Unit was created (the Financial Monitoring Service - FMS) which began receiving reports on 1 January 2004. There have been some money laundering prosecutions and some sizeable confiscation orders arising out of reports received by the FMS, and referred to the General Prosecutor.

159. At the end of 2003, at the General Prosecutor's Office of Georgia the *Special Service on Prevention of Legalisation of Illicit Income* (*SSPLII*) was created. It is staffed with 5 prosecutors, 2 deputies and 2 advisors. It is responsible for the investigation of money laundering cases received from the FMS and other sources. If a case appears to be linked with money laundering this Special Service takes over the investigation.

160. On 17 February 2004 the Parliament of Georgia ratified the Strasbourg Convention.

161. On 25 February 2004 the Parliament of Georgia passed the "Law on Changes and Amendments to the Law of Georgia on Facilitating the Prevention of Illicit Income Legalisation", which aimed to assure basic compliance with FATF standards on customer identification and broadened the competences of the FMS.

162. On 23 June 2004 the FMS became a member of the Egmont Group.

163. On the basis of the AML Law, the FMS (in conjunction with relevant supervisory authorities) developed and approved normative acts for different monitoring entities in which rules for receiving, systemizing and processing information by monitoring entities and forwarding it to the FMS are defined. The FMS issued normative acts determining the lists of terrorists and persons supporting terrorism in accordance with relevant UN Resolutions, as well as a list of non-cooperative territories based on the FATF list.

164. In autumn 2005, the FMS and the Juridical Committee of the Parliament of Georgia initiated a legislative package on changes and amendments to the Criminal Code and Criminal Procedure Code of Georgia, intended to assure compliance of Georgian legislation on provisional measures and confiscation of property with relevant provisions of the "Strasbourg Convention". On 28 December 2005 these amendments to the Criminal Code of Georgia and Criminal Procedure Code of Georgia were adopted by the Georgian Parliament. In this regard, the system has improved since the second evaluation. There are also administrative forfeiture provisions which have been introduced dealing with family members and close relatives of officials, where officials are subject of prosecution, and in respect of family members, close relatives and associated persons in the context of criminal cases involving organised crime groups. These provisions have resulted in some significant confiscation orders. However, as noted beneath, practitioners, prosecutors and the judiciary need more experience in the application of the new criminal confiscation provisions. Better statistical information on the numbers of seizures, freezing and confiscation orders in general proceeds-generating cases (where the administrative forfeiture provisions are not used) is required in order that the Georgian authorities can assess the

effectiveness of the overall confiscation regime in the fight against organised crime and proceeds-generating crime generally.

2 LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES

Laws and Regulations

2.1 Criminalisation of money laundering (R.1 and 2)

2.1.1 Description and analysis

Recommendation 1

165. Georgia acceded to the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the Vienna Convention) on 8 January 1998. It was ratified on 28 May 1997 and was brought into force on 8 April 1998. Furthermore, it signed the 2000 United Nations Convention against Transnational Organised Crime (the Palermo Convention) on 13 December 2000. The process of ratification of this convention was pending at the time of the on-site visit[13].

166. Criminal liability for money laundering is provided for in the Criminal Code of Georgia (CCG). The new wording of Article 194 CCG (amended in December 2005) is as follows:

> *Art 194. Legalisation of Illicit Income*
> (1) *Legalisation of illicit income, i.e. giving a legal form (acquisition, ownership, utilisation, conversion, transfer or any other action) to the property acquired through criminal means for the purpose of concealing its illegal origin, as well as concealing the source, location, allotment, circulation of the property, related rights or property right,*
> *-shall be punishable by imprisonment from four to six years in length.*
> (2) *The same action:*
> *a) by a group;*
> *b) repeatedly;*
> *c) involving generation of income in large quantities,*
> *-shall be punishable by imprisonment from six to nine years in length.*
> (3) *The same action:*
> *a) by an organised group;*
> *b) by using one's official position;*
> *c) involving generation of income in extremely large quantities,*
> *-shall be punishable by imprisonment from nine to twelve years in length* [14].

167. According to Note 1 of Article 194 CCG[15],
- income from crime committed in the taxation field
- as well as income up to GEL 5,000

shall not be considered as illegal / illicit for the purposes of Article 194 CCG.

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[13] On 5 September 2006 Georgia also ratified the Palermo Convention.

[14] In an amendment to the Criminal Code, which came into effect after the on-site visit (July 2006), the basic penalty for money laundering was reduced to imprisonment to 2 - 4 years and the penalty provisions in respect of actions by a group, actions committed repeatedly and those involving generation of income in large quantities was reduced to 4 - 7 years and the actions committed by an organised group, by using one's official position and involving generation of income in extremely large quantities was reduced to 7 - 10 years.

[15] This Note is a legal provision specifying the scope of the application of Article 194 CCG.

168. The physical and material elements of the offence broadly cover Article 3 (b) (i) and (ii) of the Vienna Convention and Article 6 (a) (i) and (ii) of the Palermo Convention, in that:

- a wide range of actions from acquisition to conversion / transfer of property acquired through criminal means for the purpose of concealing its illegal origins are incriminated;
- concealment of the source, location, disposition of such property (knowing it is proceeds) is also incriminated.

169. A wide interpretation of the existing provisions may be sufficient to cover that part of the physical element in Article 3, para. 1 (b) (i) Vienna Convention and in Article 6, para. 1 (a) (i) of the Palermo Convention which deals with conversion / transfer of property knowing that property is proceeds for the purpose of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his action. The Georgian authorities indicated that prosecution for transfer in these circumstances was technically possible using a broad interpretation of existing provisions but further clarification of this aspect of the criminal formulation would assist.

170. As the physical elements of the offence appear grounded in acts associated with concealment, Article 3, para. 1 (c) (i) of the Vienna Convention and Article 6, para. 1 (b) (i) of the Palermo Convention appear not to be covered – i.e. simple acquisition, possession or use of property known to be proceeds. It was not indicated to the examiners that this would be contrary to constitutional principles and / or the basic concepts of the legal system. Moreover, the preventive Law appears to define legalisation of illicit income in Article 2 (c) to include acquisition, utilisation or any other action as well as concealing its true origin. The examiners have made their assessment of Recommendation 1 on the basis of the criminal legislation, but this inconsistency should be clarified.

171. The Georgian prosecutors explained that Article 194 CCG covers both direct and indirect proceeds of crime, though it is not expressly provided for. It was argued that this could be inferred from Article 52 CCG, which deals with forfeiture of property. According to Part 2, "*forfeiture of the property acquired through criminal means implies forfeiture of the property of the convicted person acquired by criminal means (all items and immaterial property, also legal acts and documents, which grant rights over the property), as well as any proceeds derived from such property or the property of equivalent value* ...". The Georgian prosecutors' position (which the evaluators accept) is that indirect proceeds of crime are now covered, though only since the December 2005 amendments. Since then, two cases have been prosecuted involving laundering of indirect proceeds of crime.

172. The evaluation team was informed, that in a money laundering case, when establishing that property is the proceeds of crime, a prior conviction of a person for a predicate crime is not needed. The practice so far has been to prosecute money laundering cases where there has been a conviction for the predicate offence or where the predicate crime and the money laundering offence are tried on the same indictment. At the time of the on-site visit there was one investigation which had been commenced where it was possible that an autonomous prosecution for money laundering might be brought in the future. Prosecutors indicated that in such proceedings the illegal source of the income would have to be ascertained. The level of proof required to establish this element in respect of domestic (or foreign) predicate offences was untested in court proceedings.

173. Subject to the Note to Article 194, the basic approach of the Georgian authorities is to criminalise money laundering on an "all crimes" basis. However, the range of predicate offences to money laundering requires close consideration. Firstly, Article 6, paragraph 2 (b), of the Palermo Convention prescribes that each State Party shall include as predicate offences all serious

crimes as defined in its Article 2. Article 2, paragraph b, of this Convention defines as a "serious crime" all offences punishable by a maximum deprivation of liberty of at least four years or a more serious penalty. Pursuant to Article 218 CCG, tax evasion is punishable by fine or by imprisonment for up to five years in length, which means, that – under the Palermo convention – it has to be considered as a serious crime. Consequently, the exclusion of crimes committed in the "taxation field" (where the penalty is four or more years) from the list of predicate offences, possibly including some taxation crimes committed by organised criminal groups, is not in line with Article 6, paragraph 2 (b), of the Palermo Convention. The AML/CFT Methodology requires that countries should cover all serious offences, and they should extend this to the widest range of predicate offences. At a minimum, predicate offences should include a range of offences in each of the designated categories of offences. It is noted that taxation crimes are not in the designated categories of offences in the Glossary to the FATF Recommendations, and therefore under FATF standards do not have to be covered.

174. In practice, it was unclear how wide the exemption of crimes in the "taxation field" really is, and how far it covers any, or indeed all, offences in the Customs field, bearing in mind that Article 2 of the Preventive Law defines illicit income as monetary funds, property or property rights acquired through crime except for the crimes committed in the tax and customs spheres. The evaluators were advised of one large money laundering case, based on smuggling of alcohol (to the value of 2 million US Dollars), so it appears that smuggling *per se*, which is a designated category of offence under the FATF standards, is properly a money laundering predicate. However, the potential width of this taxation crime related exemption, and how far it might be interpreted by the Courts as applying to Customs matters, gave rise to concerns by the evaluators that some serious predicate offences might be excluded, even if Georgia is not obliged to include them under the FATF standards. The Georgian authorities consider that as Article 194 was introduced after the preventive law, under the Georgian Law of Normative Acts, Article 194 would take precedence, in order that offences in the Customs field could be predicate offences to money laundering. However this issue has not been tested by the courts in respect of offences other than smuggling.

175. The exclusion of crimes of any predicate offence with income less than GEL 5,000 is not in line with the standard which requires that the money laundering offence should extend to any type of property regardless of its value. In practice the Georgian authorities indicated that there had been no money laundering case where the threshold was lower than 100 000 Euros.

176. The examiners have been provided with a list of criminal offences in Georgia said to correspond to the categories of offences in the FATF Glossary (Annex III). The Georgian authorities considered that all designated categories of offences were covered. However at the time of the onsite-visit financing of terrorism was not a separate crime and terrorist financing in all its forms were not predicate offences to money laundering[16]. The examiners were also not satisfied that the offences referred to in the table fully covered insider trading as it is generally understood.

177. According to Article 4 (2) CCG (Annex 4), a person who has perpetrated a crime on the territory of Georgia shall bear criminal liability. A crime shall be considered to be perpetrated on the territory of Georgia if it began, continued, terminated or ended on the territory of Georgia. When a predicate crime is committed in another country and money is laundered in Georgia, the commission of the money laundering offence is considered to have continued or have ended on the territory of Georgia and falls under Georgian jurisdiction. Therefore the Georgian authorities advised that money laundering is prosecutable in Georgia even if the predicate offence is

[16] Article 331^1 which provides for a separate offence of financing of terrorism was adopted on 25 July 2006 and was brought into force on 9 August 2006.

committed abroad. No court decisions had been reached on this in practice though the Georgian authorities indicated that at least one case was being brought on the basis of a foreign predicate.

178. The formulation of Article 194 CCG does not distinguish between laundering by the persons who committed the predicate offence and third persons. The evaluators were informed, that "self laundering" can be prosecuted and the evaluators concluded that the offence of money laundering applies to persons who commit the predicate offence.

179. Turning to whether there are appropriate ancillary offences to money laundering, complicity is punishable based on the general norm in Art. 25 CCG (Annex 4).

180. Complicity under the Georgian Criminal law is defined as joint participation of two or more persons in the perpetration of the crime (Article 23 CCG). Article 24 describes various types of complicity: the *organiser* (the one who staged the crime or supervised its perpetration, as well as the one who established an organised group or supervised it); the *instigator* (the one who persuaded the other person to commit the offence); the *accomplice* (the one who aided the perpetration of crime). Pursuant to Article 19 CCG an attempt to commit a crime is punishable if it is "a deliberate action that was designed to perpetrate a crime but the crime was not completed".

181. The common law term of conspiracy (to commit money laundering) is not used in Article 194 Georgian Criminal Code or in the Georgian Criminal Code generally. However, the Georgian authorities indicated that the Criminal Code allows for the notion of "preparation", which means the intentional creation of conditions for the perpetration of crime (Article 18 Criminal Code, Annex 4). Such criminal liability is only prescribed for the preparation of "especially grave crimes". "Especially grave crimes" are those which can be punished by imprisonment of more than 10 years. The evaluators were advised that "preparation" could include an agreement between more than one person that a course of conduct should be pursued, which if carried out would result in an "especially grave crime". The common law notion of conspiracy to commit money laundering appears capable of being prosecuted in respect of cases under Art 194 (3) by reference to Article 18 of the Criminal Code. Money laundering in its less aggravated forms is not currently prosecutable in the same way. The Georgian authorities considered that to do so would be contrary to fundamental principles of domestic law, embodied in the general part of the Criminal Code: that is to say – except in exceptional circumstances, prosecutions should take place for accomplished crimes and, not for incomplete crimes. This appears to the examiners to be an issue of legal tradition rather than fundamental legal principle[17].

Additional elements

182. Where the proceeds of crime are derived from conduct that occurred in another country, which is not an offence in that other country, but which would have constituted a predicate offence had it occurred domestically, it is considered by the Georgian authorities still to constitute a money laundering offence, as, according to their interpretation of Article 4 CCG, the money laundering crime will be concluded on the territory of Georgia. Again, this has not been tested in the courts.

[17] On 19 January 2007, Georgian Parliament adopted an amendment to Article 18 CCG and "preparation" covers now (in addition to "especially grave") also "grave" crimes. Article 12 CCG defines "grave crimes" as "any premeditated crime, which entails the maximum sanction of deprivation of liberty no more than ten years [...]". With reference to Article 194 CCG, which provides a sanction of imprisonment from four to six years for the basic money laundering offence, the Georgian Authorities pointed out that preparation is now applicable in all money laundering cases.

Recommendation 2

183. At the time of the on-site visit, only natural persons were subject to criminal liability for the money laundering offence. The examiners were advised that a draft law, which provides for the criminal liability of legal persons, was awaiting a third reading in the Georgian Parliament.[18] At the time of the onsite-visit, there was no civil or administrative liability for money laundering.

184. The mental element of the offence of money laundering is based on the general principles as set out in Article 9, para. 2 (wilful intent):

> "*The action shall be perpetrated with direct intention if the wrongdoer was aware of the illegitimacy of his/her action, foresaw the possibility for the arrival of the illegal consequence and wished to have this consequence, or foresaw the inevitability of the realisation of such consequence.* "

185. Thus it is clear that knowledge that the property is proceeds is required. The intent also arguably includes the possibility that the defendant acknowledges that property could be the proceeds of crime and has reconciled himself / herself to that possibility (*dolus eventualis*). Money laundering cannot be prosecuted on the basis of a "should have known" or negligence standard. The prosecutors indicated that the intentional element of the offence can be inferred from objective factual circumstances, and referred the examiners to Article 9 Georgian Criminal Code and its Commentary, which explains that intent is a subjective element of action or omission - which means that intent has to be inferred from objective facts and circumstances.

186. The penalties applicable at the time of the on-site visit in relation to natural persons for money laundering are set out above. With regard to money laundering in its unaggravated form, the penalty is imprisonment from four to six years in length. In its various aggravated forms (committed by a group; repeatedly or involving generation of income in large or extremely large quantities; by an organised group; or by using one's official position) the sanctions range from six to nine and from nine to twelve years respectively. Compared with other crimes in the same chapter of the Georgian Criminal Code [Chapter XXVI: Crime Against Entrepreneurial or other Economic Activity] these sanctions can be regarded as proportionate. Overall the range of sanctions theoretically available appeared to be dissuasive. The evaluators were advised of one case where a shareholder of a commercial bank had been convicted of money laundering and sentenced to 9 years for money laundering and an additional 3 years for the predicate offence of misappropriation and embezzlement. Some statistics have been provided covering sentencing (see beneath paragraph 121), albeit they are not comprehensive. It is noted from these tables that a large number of non-custodial sentences were applied in respect of money laundering convictions. The Georgian authorities indicated that this is because, in several of the relevant cases, the convicted persons were employees of a commercial bank who provided assistance to police inquiries sufficient to convict the prime mover – the shareholder noted above of the commercial bank, who was in due course sentenced to 9 years.

Statistics

187. At the time of the on-site visit a co-ordinated approach to the collection of criminal statistics generally was still being developed. Statistics of money laundering cases in the investigative stage are said to be kept by the *Special Service on Prevention of Legalisation of Illicit Income* (*SSPLII*) of the General Prosecutor Office of Georgia. The statistics on verdicts are kept by the statistics department of the Supreme Court. This department updates the data every 3 months. The evaluators were informed that statistics are only kept about (final) convictions. The examiners advise that this should also be extended to convictions which are not yet in force (e.g. because of

[18] On 25 July 2006, the Georgian Criminal Code was amended to provide for the criminal liability of legal persons for specific offences, including Art 194 (money laundering).

an appeal) and to pending money laundering cases before the courts. The representative of the Supreme Court acknowledged these problems and asserted that the Supreme Court was already working on solutions. In the examiners' view, an electronic database on money laundering cases before the courts and money laundering cases initiated by the Prosecutor would be helpful.

188. Since the Second Evaluation and up to the third on-site visit, the examiners were advised that from available information 22 defendants had been indicted for money laundering cases. 15 persons had been convicted. 12 of these defendants pleaded guilty. At the time of the on-site visit, there were outstanding cases against 3 defendants and 4 persons were wanted. Comprehensive information on the predicate offences was not provided. As noted, the examiners were told of money laundering cases with fraud and smuggling as the predicates. One other money laundering case was referred to where the predicate offence was abuse of power.

189. The examiners were advised that 2 cases involved own proceeds laundering in which 14 persons were indicted (some for predicate offences as well), 13 were convicted for own proceeds laundering (10 of whom pleaded guilty).

190. The following information has been provided about money laundering investigations, prosecutions and convictions:

Article194	Number of cases on which Investigation was Carried Out			Number of Indicted Persons			Number of Wanted Persons			Number of Persons Convicted by the Court		
	2004	2005	2006	2004	2005	2006	2004	2005	2006	2004	2005	2006
Paragraph 1	-	2	-	1	-	-	-	-	-	-	-	-
Paragraph 2	-	10	9	-	13	2	-	3	-	-	10	2
Paragraph 3	1	4	1	-	4	2	-	1	2	-	-	3
Total	1	16	10	1	17	4	-	4	2	-	10	5

Persons Convicted by the Court in 2005 for Money Laundering			
Article 194	**Total**	**Suspended Sentence and Fine**	**Imprisonment for more than 8 years**
Paragraph 1	-	-	-
Paragraph 2	10	10	-
Paragraph 3	-	-	-
Total	10	10	-

Persons Convicted by the Court in 2006 for Money Laundering			
Article 194	**Total**	**Suspended Sentence and Fine**	**Imprisonment for more than 8 years**
Paragraph 1	-	-	-
Paragraph 2	2	2	-
Paragraph 3	3	1	2
Total	5	3	2

Article 194 CCG	Convictions Total (i.e. persons)	Persons sentenced to imprisonment for money laundering	Persons also sentenced for predicate offence
Para. 1	-	-	-
Para. 2	12[1)]	-	12[1)]
Para. 3	3	2[2)]	3[3)]

Explanatory Note:
[1)] All sentences suspended
[2)] 9 years and 7 years respectively (it is understood that the third person convicted for money laundering did not receive a custodial sentence)
[3)] One person for 12 years, one person for 7 years, one suspended case

2.1.2 Recommendations and comments

191. It should first be pointed out that money laundering prosecution is being taken seriously. There have been 15 convictions and at least two significant term of imprisonment imposed (a number of persons remained "wanted"). The prosecutors indicated that the number of indictments and convictions were broadly the same. It is noted that 13 of the 15 convictions were for "own proceeds" laundering. The examiners were advised that some of the money laundering cases involved complex schemes and considerable financial damage. Most of the money laundering cases involved banking transfers by using offshore companies. Organised criminal groups are involved in money laundering and one case involving an organised group included family members engaged in the laundering operations. Nearly all these money laundering cases appear to have emanated from the reporting system to the FIU.

192. Nevertheless there are some issues which need addressing to improve the present incrimination of money laundering and enhance the effectiveness of its prosecution. While money laundering incrimination in respect of legal persons was not possible at the time of the on-site visit, the legislative process for its introduction was well advanced.

193. The physical and material elements of the Article 194 offence basically cover concealment. It would be helpful if that part of the Vienna and Palermo Conventions which covers conversion / transfer of property knowing that property is proceeds for the purpose of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his action is explicitly covered in the Article 194 offence. Similarly, the criminalisation of simple acquisition, possession or use of property known to be proceeds is recommended, as this would widen the prosecutor's armoury.

194. Conspiracy, as it is understood in the common law sense, is possible for money laundering in "especially grave crimes" (which include Article 194 [3] Georgian Criminal Code). It seems to the evaluators that it is more a basic concept of Georgian Law that criminalisation of preparation is reserved for the most serious crimes. However, the examiners have not been provided with convincing arguments that fundamental principles were preventing full criminalisation of this ancillary offence with regard to basic money laundering. It appeared to be more an issue of legal tradition. In the circumstances the examiners recommend that this notion should be fully extended for all money laundering offences[19].

[19] See footnote 15.

195. The examiners recognise that the predicate base is essentially "all crimes", but the existence of the exemption from predicate crime of offences in the taxation field (however that is defined) is problematic and should be reconsidered. As noted, tax evasion is an offence which carries a significant penalty in Georgia and this is excluded. The examiners appreciate that tax crimes (or customs offences generally) are not listed in the designated categories of offence within the FATF Recommendations, and have not therefore taken this issue into account in the ratings for Recommendation 1. However, the fundamental "all crimes" approach of the Strasbourg Convention would presuppose that such offences carrying significant terms of imprisonment should be susceptible to money laundering prosecution. It is simply noted in this context, by way of comparison, that the approach in the European Union now is to define relevant predicate criminal activity to include all offences which are punishable with a maximum of more than one year, or for States with a minimum threshold for offences, offences punishable by detention for a minimum period of more than six months. The examiners advise therefore that consideration be given to removal of the exemption for crimes in the taxation field in serious cases. If some serious customs cases which are not covered by smuggling also fall into this category, reconsideration of this issue is also advised. The removal of the exceptions for crimes committed in the tax and Customs spheres in the definition of "illicit income" in the AML Law is strongly advised.

196. The categories of predicate offences in the Glossary to the FATF Recommendations are provided for, with the exception of financing of terrorism (in all the forms envisaged in SR.II and its Interpretative Note) and insider trading as it is generally understood.

197. The examiners recommend that the financial threshold (albeit small) for money laundering cases be removed as money laundering offences should extend to any type of property, regardless of its value.

198. While the prosecutors appear to have had no difficulties so far, the extent of the evidence required by courts and prosecutors to establish the predicate criminality in a stand-alone money laundering prosecution was not always certain and is broadly untested. In all except two cases there have been guilty pleas to money laundering. Some of the prosecutors now handling money laundering cases in the Special Department of the Prosecutor General's Office (see beneath) indicated, as a starting point, that they would need to show that the proceeds were illegal. They thought that in order to do this it would be possible for a Court to draw inferences of the underlying predicate criminality, from e.g. evidence of transactions and other relevant facts, but experience of this in practice (if there was any at that point) was not described to the evaluators onsite. From the statistical data provided, which was not always easy to reconcile with other information provided, it appeared that some money laundering cases were brought in the same indictment as the predicate offence. This, coupled with the large number of guilty pleas, indicates that the issue of the level of proof required in respect of the predicate base in autonomous money laundering prosecutions had not really been directly confronted. More emphasis should be placed on autonomous money laundering prosecution for a fully effective and efficient criminalization of money laundering, particularly as the Georgian authorities have indicated that predicate offences are often committed beyond the borders of Georgia. The Georgian authorities should therefore address the issue of the evidence required to establish the predicate criminality in autonomous money laundering cases by testing the extent to which inferences of underlying predicate criminality can be made by courts from objective facts, with a view to obtaining authoritative court rulings. The examiners advise that, as in some other jurisdictions, it may be helpful to put beyond doubt in legislation that a conviction for money laundering can be achieved in the absence of a judicial finding of guilt for the underlying predicate criminality. Additionally, it may be useful to make it clear in legislation (or guidance) that the underlying predicate criminality can also be proved by inferences drawn from objective facts and circumstances. For criminalisation to be fully effective, it may also be helpful if prosecutors and law enforcement share a common understanding that a court could be satisfied,

in establishing this element of a money laundering case, where the laundered proceeds come from a general category of predicate offence (like drug trafficking – and not necessarily from a particularised drug trafficking offence on a specific date). Further guidance and perhaps consideration of further legislative provision to clarify some of these issues is advised.

199. The mental element is knowledge. The Commentary to the Georgian Criminal Code in respect of Article 9 Georgian Criminal Code helpfully clarifies that intention can be inferred from objective factual circumstances. Consideration should be given, however, to an offence of negligent money laundering. In some jurisdictions a clearer subjective mental element of suspicion that property is proceeds (with appropriately lesser sentences than for an offence based on direct intention) has been useful and, if not contrary to any fundamental legal principles in Georgia, could be considered.

200. Currently statistics are only kept about (final) convictions. This should also include convictions, which are not yet in force (e.g. because of an appeal) and pending cases. It is recommended that the Georgian authorities collect accurate, more detailed and current statistics on money laundering investigations, prosecutions and sentences (including whether confiscation was ordered). It is advised also that this data includes information on the underlying predicate offences and information as to whether the money laundering offence was prosecuted autonomously or together with the predicate offence and which cases were self laundering. This will assist subsequent domestic analysis of the effectiveness of money laundering criminalisation.

201. It is simply noted that many of the sentences given by the courts for money laundering did not involve immediate custody. On one view such sentences could be considered as rather low. It is understood that in these cases evidence from those who received such sentences was later used against the prime movers in the two cases where the convicted persons received substantial immediate terms of imprisonment for money laundering. The Georgian authorities will nonetheless wish to monitor the sentences passed by the courts in future in all money laundering cases not only to consider possible appeals against sentence, but to satisfy themselves in the context of the effectiveness of money laundering criminalization that the courts are taking these cases seriously.

2.1.3 Compliance with Recommendations 1 and 2, and 32

	Rating	Summary of factors underlying rating
R.1	**Partially compliant**	• Some of the legislative provisions need further clarification to cover all aspects of the physical and material elements in the Vienna and Palermo Conventions; preparation (which in this context is akin to conspiracy) to commit money laundering is possible for Article 194 (3) but currently not for Article 194 (1) and (2) and the examiners consider that conspiracy / preparation should be fully covered in Georgian law; • Simple possession or use of laundered proceeds should be covered; • Financing of terrorism not fully covered in designated categories of predicate offences, and insider trading should be fully covered; • The exemption for crimes committed in the tax and Customs sphere in the definition of illicit income in the preventive law should be removed; • The financial value threshold should be removed; • Further clarification of the evidence required to establish underlying predicate criminality in autonomous money laundering prosecutions should be considered, and more emphasis placed on autonomous money laundering prosecutions (especially in relation to foreign predicates) for a fully effective criminalisation of money laundering.
R.2	**Partially compliant**	• A broad range of dissuasive criminal sanctions is in place for natural persons; though the penalties for basic money laundering in some cases appeared rather low. • At the time of the on-site visit, no criminal, civil or administrative liability for money laundering in respect of legal entities.
R.32	**Partially compliant**	Statistical information was provided in response to the examiners' requests, but much of the information provided was not routinely kept. More detailed and up to date statistics should be maintained (money laundering investigations; indictments; all convictions and sentences including whether confiscation was ordered). Keeping information on a regular basis on the underlying predicate offences, whether the offence was prosecuted autonomously or together with the predicate offence; and which offences were self laundering will assist subsequent domestic analysis of the effectiveness of criminalisation.

2.2 Criminalisation of terrorist financing (SR.II)

2.2.1 Description and analysis

202. At the time of the on-site visit, Georgia had no separate provision criminalising terrorist financing. In some cases it might have been possible to prosecute financing of terrorism on the basis of aiding and abetting and other ancillary offences in relation to some of the offences provided for in Chapter XXXVIII ("terrorism") of the Georgian Criminal Code. The relevant provisions of Chapter XXXVIII (Articles 323 to 331) of the Criminal Code are set out in Annex 4. They incriminate the following activities:

- The commission of a terrorist act by individuals or criminal groups (Art. 323). Terrorist acts are defined broadly in line with Art.2 (b) of Terrorist Financing Convention, i.e. any act giving rise to the threat of a person's death, substantial property damage or any other grave consequence ... perpetrated to intimidate the population or to put pressure on a government. It does not cover acts, the purpose of which is to compel an international organisation to do or abstain from doing any act.
- Technological Terrorism – use or threat of use of nuclear, radiological, chemical or biological weapons (Art. 324).
- Cyber Terrorism – illegal abstraction, the use or threat of use of computer information (Art.324[1]).
- Assault on a political official of Georgia (Art.325).
- Assault on person or institution enjoying international protection (Art.326), which covers the alternative purpose in Art. 2 (b) of the Terrorist Financing Convention (to compel a (foreign) Government or international organisation).
- Formation of a Terrorist Organisation, or participation therein (Art.327).
- Accession and Assistance to Terrorist Organisation of a foreign State (Art.328).
- Seizure of hostages for terrorist purposes (Art.329).
- Taking possession or control of or blocking of an object of strategic importance for terrorist purposes (Art.330).
- False notification of terrorism (Art.331).

203. The Georgian authorities indicated particularly that terrorist financing is a constituent element of the Article 327 offence. Paragraph 2 of Article 327 provides:

> "2. Participation in a terrorist organisation shall be punishable by prison sentences ranging from 10 to 12 years in length."

204. Article 328 also covers "assisting" terrorist organisations in foreign States in terrorist activities. It provides: "Accession to the terrorist organisation of a foreign State or to such organisation controlled by a foreign State or assisting it in terrorist activities, shall carry legal consequences ranging from 10 to 15 years in length." The "assistance" for these purposes has generally been understood to encompass assistance in the commission of terrorist activities. The use of this Article for the provision or collection of funds for terrorist purposes had not been tested by the courts.

205. SR.II requires the criminalising of the financing of terrorism, terrorist acts, and terrorist organisations and ensuring that such offences are money laundering predicate offences. The Methodology notes that financing of terrorism should extend to any person who wilfully provides or collects funds by any means directly or indirectly with the unlawful intention that they should be used, in full or in part:

a. to carry out a terrorist act(s);
b. by a terrorist organisation; or

c. by an individual terrorist.

206. The footnote to the Methodology and the FATF Interpretative Note to SR.II make it clear that criminalisation of financing of terrorism solely on the basis of aiding and abetting, attempt or conspiracy does not comply with SR.II. Thus, it appears aiding and abetting a terrorist offence under Article 323 would not fully cover Interpretative Note 2d and paragraph 4. Though the examiners were advised that there have been 10 financing of terrorism investigations, there have been no prosecutions for terrorist financing at all using any of the offences set out above or aiding and abetting principles. There is no jurisprudence as to whether any aspects of financing of terrorism are covered by the terms "participation" in a terrorist organisation (Article 327) or "assisting terrorist organisations" (Article 328) and thus the effectiveness in practice of these provisions is untested. It seems to the examiners that neither Article 327 nor Article 328 would in any event fully cover all the requirements of SR.II and its Interpretative Note.

207. However, at the time of the on-site visit, within the confines of the existing law, it was accepted that the courts might interpret Articles 327 and 328 widely or indeed might accept that aiding and abetting principles, with regard to other existing terrorism offences in some instances, in respect of some aspects of financing of terrorism by individuals (but not legal entities as they were not criminally liable). However, there is no comprehensive coverage of the financing of terrorism issue. The Georgian authorities acknowledge this.

208. With regard to financing of terrorism being a predicate offence to money laundering, as Article 194 CCG basically follows an "all crimes" approach, some activities characterised as terrorist financing might also be held to be predicate offences for money laundering, but this is speculative and, in any event, not comprehensive. Also, given the fact that income below the threshold of 5,000 GEL is not considered as predicate crime, all terrorist financing below this threshold would be excluded.

209. As there was no autonomous offence, a new provision had been drafted, though it was not in force at the time of the on-site visit or indeed within the time period allowed in the FATF Handbook for Countries and Assessors, which specifies that while the period for taking into account new legislation in evaluations is not precisely fixed, it would not normally extend beyond a date two months after the on-site visit. This legislation came into effect almost four months after the on-site visit[20]. While on-site the evaluators offered comments on the draft provision, the examiners have not analysed the enacted provision.

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[20] This amendment was introduced to the Criminal Code on 25 August 2006 in the following terms:

"*Article 331[1] Financing of Terrorism*

1. *Financing of Terrorism, i.e. collecting or providing funds or other kind of financial resources, committed with knowledge that it will or might be partially or totally used by terrorist organisation and/or for the purpose the commission of one of the offences envisaged by Articles 227[1], 227[2], 231[1], 323-330, 330[2] of the present Code, regardless any of the crimes described in the above-mentioned Articles is actually committed,*
   is punishable with deprivation of liberty for a term from 10 to 14 years.
2. *The same criminal act, committed:*
   a. *by the organized group;*
   b. *repeatedly;*
   is punishable with deprivation of liberty for a term from 14 to 17 years.
3. *The act provided for in paragraph 1 or 2 of the given Article, committed*
   a. *by the terrorist organisation;*
   b. *causing grave consequences;*
   is punishable with deprivation of liberty for a term from 17 to 20 years or life imprisonment.

Note: The legal person shall be punished with liquidation or deprivation of the right to pursue activities and fine for the crimes envisaged by given Article."

2.2.2 Recommendations and comments

210. Terrorist financing should be criminalised as a separate crime in the Georgian Criminal Code. The draft law should be reconciled with all the aspects of the United Nations International Convention for the Suppression of the Financing of Terrorism, and should explicitly address all the essential criteria in SR.II and the requirements of the Interpretative Note to SR.II.

2.2.3 Compliance with Special Recommendation II

	Rating	Summary of factors underlying rating
SR.II	**Non compliant**	The Criminal Code provides for participation in a terrorist organisation and assisting foreign terrorist organisations in terrorist activities. The Georgian authorities also relied on the possibility of proceeding for aiding and abetting an offence of terrorism or the formation of a terrorist group. While there have been some investigations, there have been no cases and no jurisprudence. Criminalising financing of terrorism solely on the basis of aiding and abetting principles is not in line with the Methodology. The present incrimination of financing of terrorism appears not wide enough clearly to sanction criminally in respect of both individuals and legal persons (the latter were, in any event, not covered by Georgian Law at the time of the on-site visit): • The collection of funds with the intention that they should be used or in the knowledge that they should be used in full or in part to carry out the acts referred to in Article 2a and b of the Financing of Terrorism Convention (including whether or not the funds are actually used to carry out or attempt to carry out a terrorist act) • The provision or collection of funds for a terrorist organisation for any purpose including legitimate activities • The collection and provision of funds with the unlawful intention that they should be used in full or in part by an individual terrorist (for any purpose) • All types of activity which amount to terrorist financing so as to render all of them predicate offences to money laundering. An autonomous offence of financing of terrorism should be introduced which addresses all aspects of SR.II and its Interpretative Note.

2.3 Confiscation, freezing and seizing of proceeds of crime (R.3)

2.3.1 Description and analysis

211. The legal basis for forfeiture and provisional measures had recently been amended at the time of the on-site visit. The basis for forfeiture / confiscation of property is Article 52 Criminal Code of Georgia (amended on 28 December 2005). Article 52 now reads:

> *1) Forfeiture of property means forfeiture without compensation in favour of the state of the object or/and instrumentalities of the crime, item intended for commission of crime or/and property acquired through criminal means.*
> *2) Forfeiture of the object or/and instrumentalities of crime or item intended for commission of crime means forfeiture of the item owned by or in lawful possession of the suspect, accused or convicted person, used for commission of deliberate crime or fully or partly intended for this purpose, without compensation in favour of the state. Forfeiture of the object or/and instrumentalities of crime or item intended for commission of crime shall be awarded by the court for all deliberate crimes considered under this code if the object or/and instrumentalities of crime or item intended for commission of crime and forfeiture thereof are necessary for state and public interests, as well as protection of rights and freedoms of certain persons or avoiding commission of a new crime.*
> *3) Forfeiture of the property acquired through criminal means implies forfeiture of the property of the convicted person acquired by criminal means (all items and immaterial property, also legal acts and documents, which grant right over the property), as well as any proceeds derived from such property or the property of equivalent value, without compensation in favour of the state. Forfeiture of the property acquired by criminal means shall[21] be awarded by the court for all deliberate crimes considered under this Code if it is proved that the property has been obtained through criminal means.*

212. Thus forfeiture now in principle is available to the courts in respect of

- objects and instrumentalities / items used in and intended for use in the commission of crimes;
- property acquired through criminal means (proceeds). This includes all indirect proceeds income, profits or other benefits and property of equivalent value;

in cases of money laundering, financing of terrorism (so far as it was criminalised at the time of the on-site visit) and predicate offences, and presumably offences which are not predicate offences in Georgia - in the taxation field (or customs offences).

213. The evaluators were advised, that "deliberate crimes" are all those committed with intent, but not offences which can be committed by negligence. For a crime to be capable of being committed negligently the offence must be provided for specifically in the Criminal Code. Examples were given in respect of criminal damage and some road traffic offences. The Georgian authorities advised that all relevant proceeds generating cases are covered in the notion of "deliberate crimes".

214. Before the December 2005 amendments, it was not possible to confiscate / forfeit indirect proceeds of crime in a criminal case.

215. Objects and instrumentalities / items intended for the commission of crime shall be forfeited if the conditions in Article 52 (2) apply – i.e. if it is necessary for State and public interest reasons. Proceeds (direct and indirect) and equivalent value confiscation are subject to confiscation. The

[21] In previous versions which the examiners received the language was "may" though the examiners are now advised that this was a problem of translation and that in the Georgian text the language is mandatory.

prosecutors with whom the team met confirmed that if the profit from the crime was 20,000 GEL and it was invested, and resulted in 40,000 GEL, the 40,000 GEL could now be the subject of a confiscation application. The prosecutors also indicated that the new possibility of equivalent value confiscation was controversial with practitioners and that arguments had been advanced against such orders[22].

216. It should be noted that Article 52 applies explicitly only to property held or owned by the suspect, accused, or convicted person. In respect of forfeiture of property in the hands of third parties, the Georgian authorities explained that it is an issue of proof as to whether the property in fact remains under the control of the suspect, accused or convicted person. If the third party can be shown to have known that the purpose of a transfer of property to him/her was to defeat a confiscation order then the third party would not be considered by the court as being the real owner of the property. In this way it is said that the courts would also protect the interests of *bona fide* third parties. The examiners were not provided with practical examples of third party forfeiture in these circumstances in the criminal process so far. However, Article 190 CPC dealing with the provisional measure of seizure (see beneath) refers to seizure from "related persons" which are defined as in Article 44 para. 21² CPC (Annex 5). Given that a procedure exists for seizure from third parties it appears likely to follow that courts would now make subsequent forfeiture orders in relation to "related persons" relying on the definition in Article 44 para. 21² CPC, but this has not been tested.

217. It should also be noted in this context that forfeiture has been explicitly provided for in respect of property in the hands of third parties, in civil provisions in place since February 2004 for the administrative forfeiture of illegal property from public officials under the Administrative Procedure Code. These forfeiture procedures extend also to family members and close relatives in possession of such property. Similarly there are now processes under the Civil Procedure Code and the Law of Georgia on Organised Crime and Racketeering 2005 (which entered into force in January 2006) for forfeiture of property acquired from racketeering etc. in the hands of family members, close relatives or associated / related persons (defined in Article 4 [3] of the Law of Georgia on Organised Crime and Racketeering to include all persons who own assets where there is sufficient evidence that the assets derive from the relevant criminal activities and that the assets are utilised by the racketeer or member of a "thieves brotherhood"). The rights of *bona fide* third parties in this context are protected under Article 5 (3) of the Law of Georgia on Organised Crime and Racketeering. As both procedures were new at the time of the on-site visit, their effectiveness could not be assessed. They are discussed further under the "Additional Elements", as they include changes to the burden of proof.

218. Turning to provisional measures, Chapter XXIV of the CPC ("Seizure of property" - Articles 190 to 200; Annex 5) provides the legal basis for seizure / freezing. Article 190 ("Grounds for and Purpose of Seizure of Property"), which in its amended form entered into force early in 2006 and was in force at the time of the onsite-visit, provides:

> *(1) For the purpose of securing a suit, measures of criminal coercion, as well as possible forfeiture of the property, the court may seize property, including bank accounts of the suspect, accused or person on the trial, a person bearing material responsibility for his actions, and connected person, provided that there are data to suppose that they may conceal or sell the property, or the property is derived through criminal means. In case of existence of circumstances mentioned in this section, if the suspect, accused or person on the trial is an official, the prosecutor is obliged to submit a petition to the court on seizure of property of the official, including bank accounts, and on suspending implementation of obligations defined under contracts concluded by the government official on behalf of the state or on the administration of other measures for the purpose of securing a suit.*

[22] Since the onsite-visit the evaluators had been advised by the Georgian authorities that two value confiscation orders have been made in money laundering cases in criminal proceedings.

(2) Seizure of property provided in this Code may be also used when planning terrorist acts and other heavy aggravated offences, as well as for ensuring their prevention, if there are sufficient data that this property may be used for commission of crime.

(3) The Court can seize the property if there is sufficient data that this property is of racketeer or a member of thieves' world.[23]

219. Seizure of property (a concept which in Georgian system includes freezing) is only possible on the basis of a judge's order, and the evidence required for such orders is that there is data (information or evidence) from which a court can make a supposition that the suspect etc. may conceal or sell the property or that it has been obtained criminally. Such applications can be made in the early stages of enquiries in respect of suspects. Evidence to the criminal standard of proof is not required. It is noted that in the case of officials, the prosecutor is obliged to make these applications.

220. The procedure for seizure is set out in Article 193. Where there exist grounds for the seizure of property under Article 190 CPC, the prosecutor or investigator with his consent shall ascertain where and in whose hands the property is. For this purpose, in order to detect money, securities and things, the necessary investigative acts may be conducted in banks, pawn shops, deposit boxes, and in postal and other institutions.

221. It is possible to seize property subject to forfeiture / confiscation *ex-parte* and without prior notice. This can be deduced from Article 194 (1) CPC which does not include the owner in the list of persons who need to be informed about a seizing order. Article 196 (1) CPC regulates the execution procedure of the Judge's order on seizure of property: "*the investigator or prosecutor shall present the Judge's order, and in urgent cases his decision on seizure of property to the person keeping the property and request its hand over*". Pursuant to Article 200 CPC ("Appeal against the Judge's Order/Resolution on Seizure of Property"), the order on seizure of property may be appealed within 72 hours from its issuance or execution; the resolution on waiver of seizure of the property may be appealed within 48 hours from the moment it is made. The Cassation Chamber of the Supreme Court of Georgia is competent for these appeals. An appeal shall not suspend the execution of the order. In the event that the case does not proceed or the case is terminated (described as rehabilitation), the seized and withdrawn property shall be returned to him in kind, and if impracticable, in monetary form based on the average market price of the property at the time (Art 201 CPC).

222. In operational terms, for seizure, the prosecutor or investigator ascertains where and in whose hands the property is. For this purpose, in order to detect money, securities and things, investigators are entitled – without any additional approval - to conduct the necessary investigative acts in banks, deposit boxes, postal and other institutions. The FMS is also authorised to apply to the court for the purpose of seizing property or suspending a transaction, if there is a grounded supposition that the property may be used for financing terrorism (in such event materials shall be immediately forwarded to the relevant authority of the

[23] Though the Georgian authorities considered that the wording of Article 190 covered seizure in relation to future equivalent value forfeitures, this issue was clarified in an amendment adopted in July 2006. Article 190 (1) now reads:

(1) For the purpose of securing a suit, measures of criminal coercion, as well as possible forfeiture of the property, the court may seize property, including bank accounts of the suspect, accused or person on the trial, a person bearing material responsibility for his actions, and connected person, provided that there are data to suppose that they may conceal or sell the property, or the property is derived through criminal means. If it is impossible to trace the property obtained illegally, the court is allowed to order the seizure of property equivalent value. In case of existence of circumstances mentioned in this section, if the suspect, accused or person on the trial is an official, the prosecutor is obliged to submit a petition to the court on seizure of property of the official, including bank accounts, and on suspending implementation of obligations defined under contracts concluded by the government official on behalf of the state or on the administration of other measures for the purpose of securing a suit.

General Prosecutor's Office of Georgia). In order to do so, the FMS is authorised to request and obtain from monitoring entities additional information and documents available to them, including confidential information, on any transaction and parties to it, for the purpose of revealing the facts of illicit income legalisation or terrorist financing. Furthermore, according to Article 10 section 4 of the AML Law, the FMS is entitled to request monitoring entities to prospectively monitor accounts and advise the FMS of future transactions, and this is also done in practice.

223. In the case of matrimonial or family property, the accused person's "share" is subject to seizure. If there is evidence that joint property has been acquired or partially funded by criminally gained resources, the entire property or part thereof may be seized (Article 196 para. 7 CPC). A person who believes that his/her property has been unlawfully or unreasonably seized, including a person who is not connected with the matter, but whose property has been mistakenly entered in a record, is entitled to claim release of his/her property from seizure (Article 200 para. 2 CPC). According to Article 21 of the CCP (Freedom of Appeal against Procedural Acts and Decisions) "other persons" or "authorities" may appeal against decisions taken in the criminal procedure process (not only the participants in the criminal proceedings). Thus, the rights of *bona fide* third parties are protected.

224. The procedure for the storage of seized property is set out in Article 198 CPC (Annex 5). Practice with seizing and freezing, especially with regard to indirect proceeds, was in its early stages at the time of the on-site visit and while some applications were being made, more training of prosecutors and investigators in these procedures and financial investigation techniques generally is urgently required.

225. In order to prevent or void actions, where the persons involved knew or should have known that as a result of those actions the authorities would be prejudiced in their ability to recover property subject to confiscation, the Georgian authorities pointed to the procedures for seizing property from "related persons" under Article 190 (as "related persons" are defined under Article 44 para. 21² CPC). At the time of the onsite-visit the Georgian authorities had had experience of seizing property registered in the hands of a third party in one major money laundering case on the basis of the "related persons" provision.

226. Comprehensive statistics of amounts of property frozen, seized and confiscated relating to money laundering cases is kept by the *Special Service on Prevention of Legalisation of Illicit Income*. The information provided shows that seizure of proceeds was applied in 4 money laundering cases (in total approximately 18,750,000 GEL, i.e. 8,334,000 Euro). Value confiscation orders were made in two money laundering cases to an approximate value of 8,450,000 GEL (i.e. 3,786,000 Euros). In one case in 2006 confiscation orders of 182,990 GEL were made in respect of four defendants. In the other case, 1,200,000 GEL was confiscated. In cases other than money laundering 150 million GEL had been confiscated, using the new administrative procedures involving officials. In respect of general criminal confiscation, Article 52 is, as noted, new and detailed information was not available. Neither were there available any general statistics on freezing and seizure under the CCP in non-money laundering criminal cases.

227. So far as provisional measures were concerned, comprehensive statistics on freezing and seizure generally in cases other than money laundering were not provided.

Additional elements

228. At the time of the on-site visit, there was no criminal liability of legal persons in place[24] and it was only possible to confiscate the property of natural persons who have committed the crime. That said, there were (and are) provisions in respect of organised criminal groups (which are not legal entities). These are discussed below.

229. There are now, as noted earlier, some innovative confiscation / forfeiture provisions in place in Georgia in special cases involving public officials, and organised crime groups – which incorporate elements of the civil standard of proof in criminal proceedings. They were introduced particularly to support the fight against organised crime and corruption.

230. The first such provision was introduced in 2004 and is now found in Article 37^1 of the CCP amended in February 2005. In the case of "officials" (as defined in Article 43) being criminally prosecuted, Article 37^1 provides:

> "1. If a prosecutor reasonably doubts (i.e. suspects) that the property under possession of an official may be acquired as a result of a committed crime, he shall initiate a claim in connection with seizure of the illegal or unsubstantiated property in possession of the official, as well as income and stocks (shares) received there from and its transfer to the State.
>
> 2. In the case prescribed by section 1 of this Article, the proceedings shall be conducted in the procedure established by the Georgian Administrative Procedure Code."

231. In such a case the decision on forfeiture to the State does not depend on a conviction for the criminal offence. The prosecutor (plaintiff) and the defendant share the burden of proof. This procedure can also apply to third parties who are family members or close relatives of the official. Their property, as well as the official's, can be recognised by the court as illegal, after an evaluation of the relevant evidence. The prosecutor (plaintiff) submits evidence with respect to the unlawfulness of the defendant's property. The defendant (the official or family member, etc.) has to submit to the court documents confirming the legality of the property or the financial means for acquiring such property or evidence of tax payments on the property. On the basis of such a hearing the judge can recognise property of an official or family member / close relative as unjustified, without a criminal conviction. Since 2004, these provisions were applied in the cases of 75 public officials and related persons and property to the value of 150 million GEL was confiscated.

232. Another innovative piece of legislation is, as noted earlier, the Law of Georgia on organised Crime and Racketeering, adopted by the Parliament on 20 December 2005, and which came into force in January 2006 (Annex 6).

233. The Georgian Criminal Code now recognises the concepts of "racketeers", a "thieve's brotherhood", and "thieves in law". These terms are defined in Article 3 of the 2006 Law. Under an amendment to the Civil Procedure Code (Article 356, para. 2 – Annex 8), a prosecutor can file an asset forfeiture lawsuit in a civil court within 30 days of a guilty verdict against a member of a racketeering group, thieves brotherhood, etc., as well as against their family members, close relatives or associated persons. In this context, tainted assets in the hands of third parties (i.e. those who are not family members) are subject to forfeiture if there is sufficient evidence that the assets are utilised by the racketeer etc. (see Article 4 (3) of the Law of Georgia on Organised Crime and Racketeering).

[24] After the on-site visit, on 25 July 2005 several amendments improving the AML/CFT regime of Georgia were adopted. *Inter alia* a criminal liability of legal persons was established.

234. The procedure for forfeiture from racketeers, family members and close associates is set out in Article 356, para. 3, CCP. In the case of racketeers etc., the judge makes a decision if he/she finds the property to be from illicit activity or there is not enough documentation or other evidence that it was acquired from legal activity. The burden of proof is on the plaintiff (prosecutor) who is responsible for providing evidence proving that the assets are from racketeering activity. The civil standard of proof is applied. In lawsuits in respect of property in the hands of a member of a thieve's brotherhood, his family member, close relatives or associates, the judge makes the decision to forfeit if there is no documentation or other evidence that it was acquired from legal activity. In such cases, the burden of proof is on the defendant, who has to show that it was acquired from legal activity.

235. Given that these were new provisions, it was unclear how the shared burden and reverse burden provisions would work out in practice.

2.3.2 Recommendations and comments

236. There is a basic legal structure in place now for the freezing, seizing and forfeiture of objects, instrumentalities and criminally acquired assets (proceeds), for making value forfeiture / confiscation orders and taking provisional measures to support such orders. In this regard, the system is much improved since the second evaluation. Freezing and arresting of bank accounts can be achieved *ex parte* at sufficiently early stages in enquiries with a view to forfeiture.

237. There still may remain one difficulty with the legal structure. On one interpretation objects and instrumentalities are subject to mandatory forfeiture only if this is necessary for State or public interests. This formulation appears more relevant to the forfeiture of objects such as knives and other instrumentalities like dangerous weapons and not to the laundered property in a stand-alone money laundering prosecution, which will be subject to forfeiture as objects of the offence and not as proceeds of predicate crime. It seems to the evaluators that laundered property should always be subject to mandatory confiscation / forfeiture and that this should be addressed. Laundered proceeds in stand-alone money laundering prosecutions should be capable of mandatory confiscation. The Georgian authorities consider that all objects and instrumentalities can be forfeited on the basis of Article 52 (2) in the public interest, but the examiners considered that interpretation does not necessarily follow from the language of the provision (in English translation at least). The examiners consider that this needs clarifying.

238. The forfeiture regime with a regard to property acquired by criminal means is now said to be the subject of mandatory forfeiture, even though in earlier translations the language used in English clearly appeared to be discretionary. If this is the case in practice, it is an important advance. It remains to be seen whether the courts will always make such orders in all cases where evidence is given to the court that property is acquired through criminal means. In the absence of general practice so far, the examiners could not confirm the general mandatory nature of criminal forfeiture. In these circumstances, and to reinforce the supposed mandatory nature of the new general criminal confiscation obligation, the examiners advise that the Georgian authorities could also consider whether in respect of particular offences (like money laundering, drug trafficking, human trafficking) the criminal provisions themselves should explicitly provide for mandatory confiscation of instrumentalities, objects and proceeds.

239. The procedures for confiscating from third parties property which has been transferred to defeat confiscation orders were first addressed by administrative provisions dealing with family members and close relatives of officials where officials are subject of prosecution and then in respect of family members, close relatives and associated persons in the context of organised crime groups. These provisions (and the associated changes to the burdens of proof for forfeiture

in these cases) are very welcome, and should cover many third parties into whose hands illegal assets fall in sensitive cases. However the issue has yet to be tested in general criminal cases where the administrative provisions do not apply. The Georgian authorities should monitor this to ensure that the law is being applied as they expect.

240. The examiners thus have a concern about the current effectiveness of the provisional measures and forfeiture regime overall in practice, despite some significant success with some major confiscation orders. Clearly the new administrative provisions for confiscation in respect of cases being brought against officials have been successful. But the use of provisional measures and confiscation needs also to be routinely applied in general criminal cases. Given that some relevant provisions in this area are very new, it was apparent that the practice of confiscation / forfeiture of all proceeds (direct and indirect) in major proceeds-generating cases was insufficiently embedded into criminal process. At the time of the on-site visit, practitioners questioned value confiscation and the prosecutors themselves were not always clear as to the practice, particularly in respect of the new confiscation provisions discussed above. The lack of information on numbers of seizures and freezing orders in non-money laundering cases raises concerns as to how frequently such applications are made in practice. It is necessary that these orders should become routine in major proceeds-generating cases if proceeds are not to be dissipated before confiscation orders can be made. The examiners consider therefore that freezing, seizing and confiscation needs to be more consistently applied in major cases. This issue is taken up in the law enforcement section (see section 2.6, paragraph 271). In this context, consideration could be given to a special directive / guideline to prosecutors and investigators that the financial aspects should be routinely investigated in major-proceeds generating cases, with a view to early seizure / freezing of assets.

2.3.3 Compliance with Recommendation 3

	Rating	Summary of factors underlying rating
R.3	**Largely compliant**	• New legal provisions are now in place to cover confiscation of proceeds direct and indirect, value confiscation orders and provisional measures in support of these. The evaluators were advised that the new forfeiture provision in Article 52 (3) CCG is mandatory, but in the absence of relevant practice the evaluators are not in a position to confirm this. Its mandatory nature needs testing in practice. • In respect of property transferred to third parties to defeat confiscation orders, there are administrative procedures to confiscate transferred / tainted property of officials and racketeers in special circumstances. However, practice has yet to be established that forfeiture from third parties of tainted property can be applied in general criminal cases. • It should be clarified that the objects of money laundering and instrumentalities can be subject to mandatory forfeiture in a stand alone money laundering case. • Despite two significant confiscation orders, the examiners had a reserve on the effectiveness overall of the provisional measures and confiscation regime in general criminal cases (particularly where the administrative provisions for confiscation in respect of officials or racketeers cannot be used). New provisions need embedding into the general criminal process.

2.4 Freezing of funds used for terrorist financing (SR.III)

2.4.1 Description and analysis

Generally

241. Freezing of funds used for terrorist financing was explained as being covered by the Georgian CCP, the "Law of Georgia on facilitating the Prevention of Illicit Income Legalisation" (the AML Law) and the Ordinance N.526 of the President of Georgia from 21 December 2001 (Annex 9). The AML Law was amended on February 25, 2004 in order to address requirements of relevant international standards, *inter alia*, UN Security Council Resolutions 1267 and 1373. However, the examiners were not advised on site of any clear legal mechanism to convert designations under United Nations Security Council Resolutions 1267 (1999) and 1373 (2001) into Georgian law, in order to circulate these lists to their authorities and financial institutions.

242. The designations received by the Ministry for Foreign Affairs are passed to the National Security Council, the FMS and the Ministry of Internal Affairs. The FMS circulates financial institutions (and all monitoring entities) with the designations. There was no clear designating body for Res. 1373 (2001). Though it appeared that the financial institutions were checking against the lists, no terrorist assets had been frozen under the Resolutions through an administrative procedure (by the FMS or other central body) or by the Georgian courts upon the application of the FMS or the General Prosecutor's Office.

243. The procedure in Georgia under S/RES/1267 and S/RES/1373 (2001) was identical at the time of the on-site visit, though there were some discussions about whether the National Security Council should have a role in considering designations under 1373 and designations of other countries, but at that time this was inconclusive. While on-site, the evaluators were also told that an Inter Agency Commission of the National Security Council was preparing a report to the United Nations Security Council on implementation of the Resolutions. It was understood no reports had been sent in 2004 and 2005. A report was subsequently sent in 2006. With or without domestic legal authority to do so, the examiners understood that all lists of designations received (from whatever source) by the FMS were circulated to the financial sector. Thus what is stated beneath in respect of procedures for implementing S/RES/1267 (1999) appears equally applicable to domestic implementation of S/RES/1373 (2001) and third country lists.

244. In respect of Resolution 1267, the United Nations Security Council 1267 Committee designates persons whose assets or funds are to be frozen. It is required that countries have effective laws and procedures to freeze terrorist funds or other assets of persons designated by the 1267 Committee without delay and without prior notice to the designated persons involved.

245. Publicity of the lists is not within the competence of the National Security Council. This responsibility, in practice, falls to the FMS. The designations are published in the Official Gazette by the FMS and on their website. This is deemed to be publication to the general public and the financial sector. However, the FMS has also issued Ordinances determining lists of terrorists and persons supporting terrorism (based on the 1267 Resolution and its successor resolutions and also embraces designations under Resolution 1373). These lists are updated (by the FMS) in accordance with changes received to the lists and are sent to all monitoring entities. These procedures (by the FMS), while basically covering the requirement for systems of communicating actions taken under the freezing mechanisms to the financial sector. A member of the Methodological and International Cooperation Department checks the UN official website on a daily basis and in the case of changes prepares the relevant Decrees. This process can be done very quickly (within one day) and the Decree published and sent to all monitoring entities and

placed on the FMS website (in Georgian and English). The FMS at the time of the on-site visit did not provide consolidated information on designations in a more user friendly form than they were received from the United Nations or third countries (such as alphabetically or, by date of designation, as suggested in the Best Practices Paper)[25].

246. The obligation of the financial sector to freeze funds or other assets and promptly report on matches is found in the AML Law. Article 5 section 7 of the AML Law (under the general heading of "transactions subject to monitoring") provides *inter alia*: "The monitoring entity shall also suspend implementation of the transaction, if any party to the transaction is on the list of terrorists or persons supporting terrorism, and immediately forward the relevant reporting form to the Financial Monitoring Service of Georgia." The examiners were told that this obligation did not simply involve suspending a particular transaction but freezing all the assets on the account. The examiners have not seen any legal basis for this guidance to the financial sector which makes this requirement clear. While this procedure may cover most funds of designated persons on terrorist lists, it cannot cover other assets held outside financial institutions (like houses and cars). At the time of the on-site visit, if a monitoring entity had found a match with one of their clients and notified FMS, FMS would automatically notify the *ATC* within the Structure of Internal Affairs[26].

247. The examiners have been advised since the on-site visit, though there is no written feed-back in place from the Department of Internal Affairs on these issues, databases are searched and should there be a need to freeze assets, the Police or General Prosecutor could do so on the basis of Article 190 paragraph 2 CPC as amended which now provides: "*Seizure of property provided in this Code may be also applied for one of the crimes stipulated in Articles 323-330 and 331[1] of the Criminal Code of Georgia or planning other heavy aggravated offences, as well as for ensuring their prevention, if there are sufficient data that this property may be used for commission of crime*" (emphasis added).

248. Article 10 section 4 (f), of the AML Law gives authority to the FMS generally to apply to the court for the purpose of seizing the property (bank account) or suspending a transaction (operation) if there is a grounded supposition that the property (transaction amount) may be used for financing of terrorism (in such event, materials shall be immediately forwarded to the relevant authority of the General Prosecutor's Office of Georgia and the *ATC* at the Ministry of Internal Affairs). Article 10 section. 4 (f), is understood to cover both the FMS forwarding information to the General Prosecutor on persons with assets in Georgia, in order that the General Prosecutor should obtain a court based (longer) freeze or seizure of assets identified as being held by a person on the United Nations list (SR.III). This provision [Article 10 section 4 (f)] together with Article 10 section 5 (b) of the AML Law is also authority for the FMS transmitting information to the prosecutor in respect of suspicious transactions related to terrorism (SR.IV). The examiners understood that in the case of information provided as to a match under Resolution 1267 (or 1373), the FMS would not make a judgment themselves on whether such information should then be passed to the prosecutor, but simply transmit it. The language of Article 10 section. 4 (f) which requires a "grounded supposition" before forwarding information to the Office of the Prosecutor General is understood to refer to SR.IV suspicious transaction reports only, in respect of which the FIU makes a collective decision as to those reports to send to the prosecutor (as it does with suspicious transaction reports generally). However, so far as the examiners are concerned, the reference to "grounded suspicion" makes for some unclarity in the context of SR.III.

[25] With Decree N. 116 of 31 October 2006 the format was changed and the Georgian authorities advised that the lists are now published in a more user-friendly format.

[26] From the 30 June 2006 and under amendments to Article 14 section 4 subsection f) of the AML Law the FMS is now formally empowered to do this.

249. When such information is passed to the General Prosecutor, the examiners were advised that Article 190 (2) CCP, as noted above, allows for seizure of property / longer freezing of accounts.

250. The examiners were advised that one match had been reported to FMS and was transmitted to the General Prosecutor, but it turned out to be a false positive and no application by the General Prosecutor for a court order was made. Therefore, this procedure has not been tested. It is unclear therefore how the courts would interpret Article 190 (2) CCP in the light of Article 190 (1), which deals generally only with suspects, persons accused of crime, etc. and is silent on designated persons (who may not be a suspect or the subject in due course of any criminal proceedings, particularly given the limited nature of the financing of terrorism criminalisation at the time of the on-site visit).

251. For all the stages in the process outlined above, no prior notice need be given to a designated person.

252. The resolutions speak of "funds or other assets". The reference in Article 5 (7) AML Law is to "transaction" and in Article 10 section 4 (f) AML Law, to "property (transaction amount)". The Criminal Procedure Code does not define "property". For a definition of property in Georgian Law, recourse is generally made to the Civil Code, which defines property in Article 147 as "*all items and immaterial property, which can be owned, used and disposed by natural persons and legal entities and purchased without limitation, if it is not prohibited by the law and does not contradict with moral norms*" (Annex 7). It appears that this definition is quite wide but it is unclear whether it would fully cover the definition of funds or other assets wholly or jointly owned or controlled, directly or indirectly by designated persons, terrorists, those who finance terrorism or terrorist organisations and funds or other assets derived or generated from funds or other assets owned or controlled directly or indirectly by designated persons, terrorists, those who finance terrorism or terrorist organisations). In the context of SR.III, this issue should be clarified by the Georgian authorities. A clearer legal definition of the obligation to freeze "funds or other assets" is necessary.

253. There was an established procedure for notification back to the United Nations Al Qaeda and Taliban Sanctions Committee.

Resolution 1373

254. It appears that the lists of persons designated in the context of S/RES/1373 (2001), including those on lists provided by other countries, are received by the Foreign Office and circulated in the same way by the FMS as 1267 designations. There is no legal mechanism in place to examine and give effect to designations by other jurisdictions and to determine whether it is appropriate for freezing action under such mechanisms to take place in Georgia. As noted, at the time of the on-site visit, the Georgian authorities had not decided whether the National Security Council should have the role for considering designations under 1373.

255. The evaluators were not advised of any guidance to financial institutions or other persons / entities that may be holding targeted funds or other assets concerning their obligations in taking action under the freezing mechanisms other than the dissemination of the lists and the ordinances.

256. There were no effective and publicly known procedures for considering de-listing requests or for unfreezing the funds or other assets of de-listed persons. With regard to "false positives", pseudonyms etc., there was no special procedure of which the examiners were aware for unfreezing the assets of persons inadvertently affected by freezing mechanisms, other than the "general law". The GA advised that in their view, the General Administrative Code and Administrative Procedure Code would provide the legal route for challenges to listing. In the same way, they pointed out that the general rules in respect of appeals against property seizure under

the Criminal Procedure Code (Article 200) could be used for challenges in these cases. It is noted that in the one case mentioned (where there was an erroneous match), the system worked quickly through direct contacts between the persons concerned to avoid freezing.

257. No special procedures had been put in place for liaison etc. with the United Nations for authorising access to funds frozen pursuant to S/RES/1267 (1999) (III.9) that have been determined to be necessary for basic offences, certain types of fees, expenses and service charges or for extraordinary expenses [in accordance with S/RES/1452 (2002)]. It is simply noted that in this instance applications to domestic Georgian Courts would not provide a solution.

258. With regard to procedures for challenging the freezing measure with a view to court review, the Georgian authorities pointed to the general law in Article 200 of the CPC (Appeal against the Judges order on seizure of property) under which appeals can be lodged within 72 hours, including third parties whose property has been mistakenly entered in the record of property, so this criterion appears to be met on the assumption that the courts accept it, can be applied in the case of a freezing order in the absence of a criminal proceeding. An appeal does not suspend the order until the appeal has been determined.

Freezing, seizing and confiscating in other circumstances

259. The narrow width of the offences which might be applied to cover terrorist financing has been commented upon earlier. If an investigation or prosecution on financing of terrorism based on aiding and abetting principles under Articles 327 or 328 Criminal Code (or any other terrorist related offence under Chapter XXXVIII of the Criminal Code) were brought the funds or other assets involved could be forfeited as objects of the offence if the *proviso* in Article 52 (2) applies – either that forfeiture is necessary for State and public interest reasons, as well as protection of rights and freedoms of certain persons or avoiding commission of a new crime. It would seem likely that forfeiture would be applied by utilising those aspects of the *proviso* which allow the measure to be applied for State and public interest reasons or to avoid the commission of a new crime. Seizure of such property before conviction of a terrorism offence may be applied using Article 190 (2) CCP ("*Seizure of property provided in this Code may be also used when planning terrorist acts and other heavy aggravated offences, as well as for ensuring their prevention, if there is (are) sufficient data that this property may be used for the commission of crime*")[27]. The Georgian authorities advised with reference to the language of Article 190 section 2 CPC that seizure of terrorist assets based upon Article 190 section 2 CPC is possible in all cases related to terrorist activity but it is not required that it is related to a specific terrorist act. This interpretation has not been tested in practice.

General provisions

260. The rights of *bona fide* third parties need to be consistent with the standards provided in Article 8 (5) of the Terrorist Financing Convention (i.e. without prejudice to the rights of third parties acting in good faith). As this is essentially a court-based freezing mechanism, the Georgian authorities pointed to two provisions as fulfilling this requirement. Part I of Article 21 CCP ("Freedom of Appeal against Procedural Acts and Decisions") allows participants in criminal proceedings, and other persons and authorities, under the statute established procedure, to appeal against an act on decision of the authority (official) who conducts the criminal procedure process. The second provision is Article 200, para. 2, CPC (noted above) which provides a statutory procedure whereby a person who believes that his / her property has been unlawfully or unreasonably seized, including a person not connected with the matter, but whose property has been mistakenly entered in a record, is entitled to claim release of his or her property from seizure

[27] Forfeiture and seizure as outlined above will apply to the new financing of terrorism offence (within the limitations of its application).

as per Article 198 of the Code of Civil Procedure of Georgia. Together, these two provisions appear to cover this criterion.

261. Article 4 of the AML Law defines the following supervisory authorities:

- National Bank of Georgia – for commercial banks, currency exchange bureaux and non-bank depository institutions;
- National Commission on Securities of Georgia – for broker companies and securities registrars;
- State Insurance Supervision Service of Georgia – for insurance companies and non-state pension scheme founders;
- The Ministry of Finance of Georgia – for entities organising lotteries and other commercial games; entities engaged in activities related to precious metals, precious stones and products thereof, as well as antiques, customs authorities and entities engaged in extension of grants and charity assistance;
- The Ministry of Justice – for notaries;
- The Ministry of Economic Development of Georgia – for postal organisations.

262. Article 11 of the AML Law provides for supervision of compliance with the obligations, prescribed by the Law, including those in respect of transactions. In this context, Article 5 section 7, is relevant, which places a duty on the monitoring entities to suspend transactions if any party to the transaction is on the list of terrorists or persons supporting terrorism. Thus all supervisory bodies are obliged to check that the monitoring entities are making checks on the terrorist lists (whatever the formal legal position is with regard to the designations in Georgia). The Georgian authorities advised that monitoring of this obligation is happening in practice. Under Article 15 (5) of the AML Law, the supervisory bodies are obliged to ensure adoption (issuing) of the regulation on definition and application of sanctions (including financial sanctions) against monitoring entities for violation of this law.

Additional Elements

263. The Georgian authorities indicated that most of the measures in the Best Practices Paper had been implemented. While the examiners recognise that there are a large number of issues covered in the Paper, of the five general types of best practices outlined, there appeared to be many unaddressed by the Georgian authorities as yet.

264. Some examples from three of the major areas suffice here. On establishing effective regimes for competent authorities and courts, there was no clear competent authority for designations under 1373, and, though it is a court based system, there was no clearly accountable competent court for these measures. There were no publicly harm de-listing procedures for considering new arguments, and no consideration of "hold-harmless" or public indemnity. On facilitating communication with foreign governments and international institutions, it was unclear if consideration had been given to any system for rapid pre-notification of pending designations. On facilitating co-operation with the private sector, there was no clear process of responding to inquiries on homonyms or guidance on permitted transactions in administering frozen funds or assets.

265. The Georgian authorities recognised that procedures to authorize access to funds or other assets that were frozen pursuant to S/RES/1373 (2001) and that have been determined to be necessary for basic expenses, the payment of certain types of fees, expenses and service charges or for extraordinary expenses have not been implemented.

2.4.2 Recommendations and comments

266. At the time of the on-site visit, while some steps had been taken to ensure a measure of compliance with the United Nations Security Council Resolutions (through the AML Law and criminal procedure provisions with the FMS *de facto* at the centre of the system), the legal structure for the implementation of United Nations sanctions was incomplete. There was little or no practice and some interlocutors appeared still to be assessing how best SR.III could be fully implemented. As noted, it appeared financial institutions were checking the lists, but it was unclear precisely when this was taking place, as discussed beneath. No clear, general legal authority had been implemented for the conversion of designations under 1267 or 1373 or lists of other countries into Georgian Law. There was no designating authority for 1373. The FMS circulates the lists and updates them. It was less clear how the procedure in the AML Law for monitoring entities to suspend transactions if a party to a transaction was on a terrorist list and report to FMS meets the requirement for freezing of designated persons funds or assets without delay. If monitoring entities have to await a transaction by a designated person before alerting the FMS, than the requirement of "without delay" is clearly not met. No guidance by the FMS on this point, of which the examiners were aware, had been given. It may be that in some foreign owned financial institutions the procedures for immediate checking are well-known as a result of Group based internal guidance.

267. The Georgian authorities should provide for a clearer legal structure for the conversion into Georgian Law of designations under UNSCR 1267 and in the context of UNSCR 1373. Specifically, there should be a national authority to consider requests for designations under UNSCR 1373.

268. This mechanism must assess whether reasonable grounds or a reasonable basis exists to initiate a freezing action and the subsequent freezing of funds or other assets without delay. Designations need to be determined promptly and freezing actions without delay. In order to ensure that this happens, it should be clarified that once the FMS has communicated designations, immediate checks are required regardless of whether there are "transactions" on accounts, etc. The Georgian authorities should ensure that their legal mechanisms apply to all targeted funds or other assets as described in the UNSCRs and that freezing actions under UNSCR 1267 and 1373 and under third jurisdiction procedures extend to all funds and other assets as they are defined in Criterion III.4. Clearer guidance on these issues needs to be given to those holding targeted funds or other assets. There needs to be publicly known procedures for considering de-listing and unfreezing and for those inadvertently affected by freezing mechanisms.

269. The system ultimately turns on a freezing order made by the Prosecutor General under Article 190, para. 2, CPC. In the absence of jurisprudence, it is difficult to assess whether such freezing orders can be sustained or maintained for any length of time, given the language of Article 190 (1) which links the freezing to suspects and accused in criminal proceedings. The effectiveness of implementation of the current system turns on this. Given the present limited incrimination of financing of terrorism, and that it may prove impossible to prosecute some designated persons for financing of terrorism (or any other offence), a court based system linked to criminal process may ultimately be less than effective. While the Best Practices Paper contemplates the adoption of judicial, as well as executive or administrative procedures for freezing funds under the UNSCRs, the Georgian authorities may wish to consider, as they develop these procedures and in the light of experience with the court based system, the merits of a more general administrative procedure for handling SR.III in its entirety, subject to proper safeguards (especially with regard to *bona fide* third parties).

270. All supervisors should be actively checking compliance with SR.III, as no assets have been frozen.

2.4.3 Compliance with Special Recommendation SR.III

	Rating	Summary of factors underlying rating
SR.III	**Partially compliant**	• No clear legal structure for the conversion of designations into Georgian Law under UNSCR 1267 and 1373 or under procedures initiated by third countries; • A Designating Authority is required for UNSCR 1373; • Clarification required that freezing should be without delay and not await the completion of transactions before lists are checked; • Clearer guidance on obligations required; • Publicly known procedures for considering de-listing and unfreezing are required, and for persons inadvertently affected; • Unclear whether the prosecutorial freeze under Article 190 (2) CPC will ultimately be effective to sustain or maintain freezing of assets of designated persons; • All supervisors should be actively checking compliance with SR.III as no assets have been frozen under the UNSCRs.

2.5 The Financial Intelligence Unit and its functions (R.26, 30 and 32)

2.5.1 Description and analysis

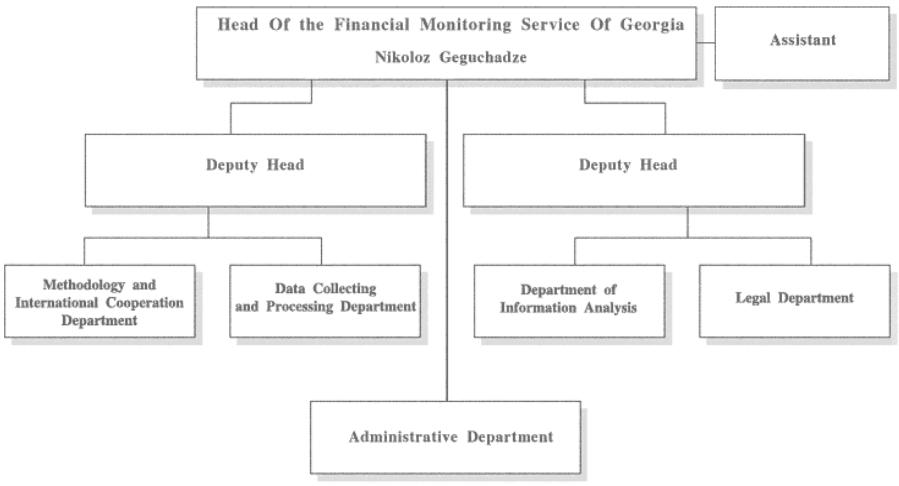
271. As noted, the Georgian FIU (Financial Monitoring Service - FMS) was legally established on the basis of Article 10 of the AML Law, adopted by the Georgian Parliament on 6 June 2003, and Article 74^1 of the Organic Law of Georgia on the National Bank, adopted on 23 July 2003, and under the Ordinance N. 354 of the President of Georgia on "Establishing the Legal Entity of the Public Law – Financial Monitoring Service of Georgia" (see Annexes 1, 10 and 11). The FMS is accountable to the President of Georgia and the Council of the National Bank of Georgia. Under Article 10 section 7 AML Law, issues relating to management, structure, representation, accountability and control of the FMS shall be determined by the Regulation of the Service, approved by the President of Georgia. The Head of the FMS is nominated by the Council of the National Bank of Georgia and is appointed by the President of Georgia for a fixed term (Article 3 of the Decree of the President of Georgia 16/7/2003). He or she serves a 4 year term, which can be renewed. The Head of the FMS can only be relieved of his duties by the President of Georgia pursuant to the "active legislation" – meaning for the reasons set out in Art 74^1 (3) of the Organic Law of Georgia on the National Bank, which covers serious professional errors, health issues, insolvency or commission of criminal offences. The current Head of the FMS has been in post since being appointed by President Shevardnadze in 2003. Prior to this appointment, he was an official in the National Bank of Georgia.

272. The FMS is described in the Law (Article 10 [1]) as "established under the National Bank of Georgia". The National Bank of Georgia is responsible for its funding and its premises. The FMS reports twice a year to the Council of the National Bank of Georgia. The AML Law and the Decree establishing the FMS both have provisions protecting the FMS's operational independence. These are discussed beneath.

273. The FMS is an administrative type FIU that serves as the national centre for receiving, analysing and disseminating disclosures of STRs and other relevant information concerning suspected money laundering and terrorist financing activities. Receiving disclosures connected with terrorist financing is arguably part of its remit by virtue of Article 2 (h) [definition of terms] which includes in the definition of suspicious transaction where "any person involved in the transaction is likely to be connected with a terrorist or terrorism-supporting persons". The FMS also, as noted earlier, disseminates the lists under the United Nations Resolutions. The examiners have considered the reporting obligation under SR.IV in Section 3.7 beneath. It is concluded that the breadth of the current reporting obligation on monitoring entities is, at best, unclear and that it needs explicitly to cover reports connected with all funds (licit and illicit) as described under SR.IV and that the current wording of Article 2 (h) limited to "persons" is insufficiently broad. Therefore, as the scope of the terrorist financing reporting obligation is limited, this could affect the overall efficiency of the FIU as the national centre for receiving, analysing and disseminating all potential disclosures concerning suspected FT activities.

274. It began receiving, analysing and systemising reports on 1 January 2004. It receives its reports electronically and in hard copy. Monitoring entities usually report on the second day after the transaction. This is *ex post facto* reporting and not *ex ante* reporting. There is no power to suspend transactions in respect of suspicions based on money laundering.

275. The following chart shows the structure and main responsibilities of the FMS:



276. The *Data Collecting and Processing Department* (13 persons, including 3 IT specialists) collects and processes documentary and electronic information received. It is responsible for the development of the informational database and software. The information received from monitoring entities is systemised and then placed in the database. The *Department of Information Analysis* (6 persons) analyses the received information (including the information processed and placed in the database by the Data Collection and Processing Department). As necessary, it seeks additional information and submits a grounded conclusion on the suspiciousness of the transaction.

277. The *Department of Methodology and International Co-operation* (4 persons) deals with the development of draft normative acts, guidelines and recommendations for enforcement of the Law of Georgia on "Facilitating the Prevention of Illicit Income Legalisation". Furthermore, it is responsible for monitoring changes in international standards and to compare them with national legislation. It co-operates with international organisations and foreign FIUs. It develops legislative proposals for the purpose of further elaborating the law and related legislative acts. The *Legal Department* (4 persons) reviews normative acts, guidelines, recommendations and agreements drafted by the FMS. It ensures the harmonisation of the Georgian legislation with international standards. The *Administrative Department* (10 persons) provides logistical support, prepares logistical agreements in cooperation with the Legal Department and compiles the balance sheet and drafts the budget. It is also responsible for maintaining records and correspondence.

278. The FMS is staffed with qualified personnel. Currently 40 persons in all work for FMS. The applicants had to pass a 4-stage contest, which was supervised by the United States Department of the Treasury and the United States Agency for International Development (USAID). At the end of 2003, 9 employees were working in the FMS, at the end of 2004 32 employees, and at the end of 2005 36 employees. Currently 40 people work for the Georgian FMS, of which many have an academic background in economics and law. Some have experience of working in the NBG or the banking system. The FMS has also a group of highly qualified IT Specialists working in the Department of Data Collection and Processing.

279. The FMS is financed by the NBG. Its budgets for the last years were as follows:

2003 – 172,609 GEL (82,144 US$)
2004 – 1,384,950 GEL (706,607 US$)
2005 – 1,723,492 GEL (957,496 US$)
2006 – 1,233,152 GEL (685,084 US$)

The reason for the smaller budget in 2006 – compared with previous years - was that the FMS was already fully equipped and considered it had all the necessary resources for its activities (including technical facilities).

280. Although the FMS is financed by the National Bank of Georgia, it is an independent organisation separated from State governmental bodies. There are provisions in both the AML law [in Article 10 section 5 (b)] and in the Decree establishing the FMS protecting the FMS's operational independence in respect of decisions whether to transmit materials to the General Prosecutor. The Law states that no permission is required from any other organ or entity when transmitting cases to the Prosecutor. In practice, the FIU advised that it was always a collective decision by the Head of the FIU and his senior management team to send cases to the Prosecutor.[28]

281. According to Article 6 section 2 of the "Regulation on Establishing the Legal Entity of the Public Law – Financial Monitoring Service of Georgia" approved under the Ordinance No 354 of July 16, 2003 the only "supervisory right" of the NBG is the control of financial activities of the FMS. The NBG does not have the right to interfere in the fulfilment of its duties and responsibilities as defined by the AML Law.

282. With assistance of the United States Department of the Treasury, a group of programmers worked in the FMS for a year and elaborated a database software. The FMS has now a special database, where the information received from monitoring entities is stored. This software allows for the storing, systemising, grouping, analyzing and the protection of the confidentiality of information. The examiners considered that this software is appropriate for the size of the FMS and the data it receives and processes.

283. Over 70% of the staff of the FMS participated in a number of seminars and trainings, for example:

- Seminar on "Financial Crime – Money Laundering" organised by the United States Department of the Treasury – October 2003, Tbilisi, Georgia;
- The Complex Financial Crimes Seminar organised by the United States Department of Justice of Overseas Prosecutorial Development, Assistance and Training – 22-23 June 2004, Tbilisi, Georgia;
- Programme on United States and Republic of Georgia - Cooperation to Combat Financial Crime, organised by the United States Department of Justice and the United States Embassy in Georgia for the FMS and the Prosecutor's General's Office, 23 August - 23 September 2004, New Orleans, Louisiana and Washington D.C., USA;
- Legislative Drafting Workshop on Anti-Money Laundering Measures: Responding to the Revised FATF 40 Recommendations, organised by the IMF/UNODC – 19-23 April 2004, Vienna, Austria;

[28] According to the amendment to the AML law, the FMS is since 30 June 2006 obliged to send information also to the Ministry of Internal Affairs as well as the General Prosecutor.

- Project against Money Laundering in the Russian Federation (MOLI-RU) – High level Seminar and International Workshop on Terrorist Financing – October 2004, Moscow, Russia;
- Anti-Money Laundering Basic Analyst Training Course organised by World Learning and USAID - March 2005, USA;
- Study visit of the FMS to Croatia – March 2005;
- Seminar on Money Laundering issues (Insurance and Reinsurance) organised by the OSCE - May 2005, Tbilisi, Georgia;
- Workshop on Money Laundering and Financing of Terrorism organised by the Joint Vienna Institute (JVI) - August 2005, Vienna, Austria.

284. According to Article 10 sections 2 and 4 subsection c, and Article 15 section 4 of the AML Law, the FMS is empowered to issue bylaws in respect of the design and transmission of reporting forms. Instructions for reporting have been issued by FMS under their authority as prescribed by the AML Law to issue relevant "normative acts" (see Article 10 (1) of the AML Law). These have been issued as decrees (secondary legislation or by laws). The AML Law empowers the FMS to issue by-laws in respect of reporting forms.

285. These by-laws have been issued in agreement with the relevant supervisory authorities for different monitoring entities and define detailed rules for receiving, systemising and processing the information by monitoring entities and forwarding this information to the FMS. They comprise Decrees for:

- commercial banks (28 July 2004, Decree N. 95)
- non-bank depository institutions-credit unions (03 August 2004, Decree N. 104)
- notaries (27 July 2004, Decree N. 93)
- broker companies (3 August 2004, Decree N. 101)
- securities registrars (3 August 2004, Decree N. 101)
- currency exchange bureaus (30 July 2004, Decree N. 96)
- postal organisations (3 August 2004, Decree N. 102)
- insurance companies and founders of non-state pension scheme (3 August 2004, Decree N. 102)
- persons organising lotteries, gambling and other commercial games (28 July 2004, Decree N. 94)
- casinos (28 July 2004, Decree N. 94)
- customs authorities (16 November 2004, Decree N. 152) .

286. In addition, the FMS approved *recording forms* and special *reporting forms* for the monitoring entities. In these forms the specifics of each monitoring entity were taken into consideration. *Recording forms* are used for documenting identification data on monitoring entities (name, legal-organisational form, address, persons authorised for management, employee in charge of monitoring etc.). *Reporting forms* are designated for submission of information on transactions (operations) subject to monitoring and persons involved therein to the FMS. The reporting forms are also available in electronic versions. The FMS held seminars for monitoring entities (involving the compliance officers) where special instructions on use of these forms, the installation of the electronic versions, completion and sending of the forms as well as instructions on other practical issues were given. The FMS, at the time of the on-site visit, was also working on a feedback form and they planned amendments to cover this. While the FMS is not a supervisory authority, the concluding sentence of Article 8 (2) of the AML Law empowers the FMS to "set the list of those principles that are to be addressed by the internal regulation and to recall and review the internal regulation and to indicate to the monitoring entity on incompliance with normative acts and request its correction". At the time of the on-site visit, the FMS was preparing guidance for STRs and on some general procedures for the banks for them better to understand their obligations.

287. The FIU has direct access to some databases. By virtue of Article 10 section 4 (e), of the AML Law, the FMS, for the purpose of implementing its functions is authorised to forward questions and obtain information from all state or local self-government and government bodies and agencies, as well as from any individual or legal entity which exercises public legal authority. The examiners were advised in general terms that the FMS co-operates with all State institutions, law enforcement bodies and supervisory agencies but there was no statistical or other information provided to demonstrate how Article 10 section 4 (e) was working in practice. The main databases to which the FMS has access are:

- Police databases – convictions and wanted persons, passports and identification-cards issued, issued drivers' licences, register of motor vehicle owners, register of administrative penalties against drivers (all direct access),
- Companies Register (regularly updated information),
- Tax Register (indirect access),
- Customs database (indirect access),
- Property register (indirect access),
- State Department of Statistics (direct access).

Where access is indirect, the examiners were advised that it generally takes up to 3 days to receive the information from the relevant authority, but it could be less in many instances.

288. Pursuant to Article 10 section 4 (a), the FMS is authorised to request and obtain from reporting entities additional information and documents. This applies not just in respect of the monitoring entity which made the report, but also to other monitoring entities that did not submit a report**.**

289. The FIU is authorised to transmit materials to the General Prosecutor[29]. The Law states that no permission is required from any other organ or entity when transmitting materials to the General Prosecutor. In practice, the FIU advised that it was always a collective decision by the Head of the FIU and his two Deputies to send cases to the General Prosecutor's Office. It has transmitted, as the statistics beneath show, 26 cases to the General Prosecutor between 2004 and the on-site visit.

290. Returning to operational independence in more detail, the FMS, as noted, submits reports on its activities twice a year to the Council of the NBG. The report of the FMS is included in the Annual Report of the NBG which is submitted to Parliament. Even though the NBG controls expenditure and financial activities, the NBG does not have the right to interfere with the professional work and responsibilities of FMS (Article 6 (2) of the By-Law of the FMS approved under Ordinance N 354 of July 16, 2003 – Annex 11). Additionally, the Head of the Service reports annually to the President of the Republic in writing and meets him from time to time. As also noted earlier, the major provision guaranteeing operational independence in the AML Law is Article 10 section 5 (b), which states that no permission from any organ or entity is required before transmitting materials to the Prosecutor. Article 10 section 6 of the AML Law is also relevant in the context of operational independence: its last sentence provides that no one shall have the right to "assign" (i.e. delegate) the FMS to seek for (obtain) any information.

291. All information relating to financial monitoring is confidential. According to Article 12 (2) of the AML Law, the FMS (as well as supervisory bodies and law enforcement) are obliged to ensure the protection of the information obtained pursuant to the AML Law, which contains personal, banking, commercial and professional secrets, and disclose such information in accordance with "applicable Georgian legislation". The only applicable Georgian legislation for these purposes is described as the AML law and the Constitution of Georgia. Article 10 (6) of the

[29] See footnote above.

AML law was introduced apparently to prevent others wrongfully seeking access to the FMS data. Article 10 (6) of the AML Law is complex in its wording but essentially provides that, with the exception of information disclosed by the FMS as a result of decisions taken to conform with the Georgian Constitution, and disclosures pursuant to international agreements (and disclosures under Article 10 [5] (b)) information within the FMS can only be otherwise disclosed as a result of a court order. No requests for such a court order have been made.

292. In the case of violation of confidentiality of information, Article 14 section 1 of the AML Law provides a civil liability: if officials and employees of the FMS, monitoring entities, supervisory and law-enforcement bodies, the "damaging entity" has to compensate the material damage as a result of the behaviour of their employees. Concerning criminal liability, the Georgian authorities pointed to Article 202 of the Criminal Code ("Illegal Gathering or Spreading of Information Containing Commercial or Bank Secrets"; Annex 4). As this provides only criminal sanctions in the case of disclosing "commercial or bank secrets for the purpose of illegal spreading or illegal application", this provision may not cover all kinds of disclosures of employees of the FMS. In this regard, the Georgian authorities pointed to Article 332 ("Abuse of Official Authority"), 333 ("Exceeding Official Powers") and 342 ("Neglect of Official Duty") of the Criminal Code; as employees of the FMS are public servants, they would be punishable on the basis of these articles.

293. To ensure maximum data security, two independent and completely isolated Local Area Networks (LAN) were set up. One of them is connected to the Internet to receive encrypted STRs from reporting entities. When an STR is received, an authorized person transfers it to a flash drive, deleting it from the external network, and moving it into the internal network, where the STR is decrypted and processed. The internal network of FMS has no external connections. Access to the internal network is within the FIU restricted to certain FMS staff members as designated by the Head of the FMS (currently 9 persons).

294. Reference has been made to the semi-annual FMS reports to the National Bank, which are presented to Parliament as part of the NBG's annual reporting and thus become public documents. The reports to the NBG provide information about the activities of the service, relevant statistical data and issues related to international cooperation. These reports do not contain detailed information. The Annual Reports of the NBG which include an FMS component, which the examiners have seen are quite brief in respect of FMS and include factual accounts of their work in the year and do not comprehensively cover typologies and trends. The annual report to the President of the Republic is not a public document.

295. On 23 June 2004, the FMS became a member of the Egmont Group. As a member of this organisation, the FMS established contacts and co-operates with numerous FIUs of other member countries. In particular, on the basis of the MOU (Memorandum of Understanding) model of the Egmont Group, agreements on exchange of information were concluded with FIUs of 12 countries (Lichtenstein, Ukraine, Serbia, Estonia, Czech Republic, Israel, Slovenia, Romania, Thailand, Panama, Belgium, Bulgaria). The negotiations are in progress with China[30] and Canada, as well as with Moldova. According to the Egmont rules, FMS can exchange information with members without MOUs, and in practice information is also being exchanged with several Egmont members on this basis.

296. The FMS keeps statistics and can search its database for information, using special software. This software allows the FMS to group reporting forms by monitoring entities, transaction types and other criteria. From 1 January 2004 (when the FMS began functioning) to 24 April 2006 the total number of reports submitted to the FMS amounted to 43,053. The following breakdown concerning the number of STRs and above threshold reports (CTRs) submitted to the FMS was provided:

[30] With China and Croatia MOUs were signed after the onsite-visit.

Monitoring entities reporting to the FMS

1.1.2004 – 24.4.2006					
Monitoring entities	**reported transactions**	**above threshold**	**suspicious**	**susp/threshold**	**total suspicious**
commercial banks	36924	35716	582	626	1208
insurance companies	437	437	0	0	0
notaries	4216	4199	3	14	17
currency exchange	273	273	0	0	0
broker companies	786	759	11	16	27
securities' registrars	417	356	23	38	61
total	**43053**	**41740**	**619**	**694**	**1313**

1.1.2004 - 31.12.2004					
Monitoring entities	**reported transactions**	**above threshold**	**suspicious**	**susp/threshold**	**total suspicious**
commercial banks	4203	4044	71	88	159
insurance companies	1	1	0	0	0
notaries	621	617	0	4	4
currency exchange	0	0	0	0	0
broker companies	19	19	0	0	0
securities' registrars	7	7	0	0	0
total	**4851**	**4688**	**71**	**92**	**163**

1.1.2005 – 31.12.2005					
Monitoring entities	**reported transactions**	**above threshold**	**suspicious**	**susp/threshold**	**total suspicious**
commercial banks	23605	23122	285	198	483
insurance companies	278	278	0	0	0
notaries	2714	2704	2	8	10
currency exchange	238	238	0	0	0
broker companies	672	654	6	12	18
securities' registrars	338	291	14	33	47
total	**27845**	**27287**	**307**	**251**	**558**

1.1.2006 - 24.4.2006					
Monitoring entities	**reported transactions**	**above threshold**	**suspicious**	**susp/threshold**	**total suspicious**
commercial banks	9116	8550	226	340	566
insurance companies	158	158	0	0	0
notaries	881	878	1	2	3
currency exchange	35	35	0	0	0
broker companies	95	86	5	4	9
securities' registrars	72	58	9	5	14
total	**10357**	**9765**	**241**	**351**	**592**

297. Since 1 January 2004, the FMS has considered the following cases:

	2004	**2005**	**2006**	**total**
cases opened	47	28	16	91
cases closed	23	25	4	52
Passed to the General Prosecutor's Office	5	12	9	26
Ongoing cases				13

298. The process of analysis is as follows: The FMS Analyst reviews all STRs and CTRs from the data base in the light of the new report (priority in this process is given to the STRs in the data base with links to the new information). The analyst then groups and systematises the information by using the specially constructed software, in particular by:

- involved persons,
- special indicators,
- filter/flags relating to persons already being monitored.

299. One STR or CTR usually does not give grounds to open a case, if some additional information on a particular transaction or involved person(s) does not exist. Normally, a number of STRs and/or CTRs, together with additional information from the FMS data base and other sources (criminal records, company registry etc.), provide the basis for opening money laundering / terrorist financing cases. The collected information is discussed first within the Analytical Department and then with the Deputy Head and the Head of the FMS. The decision on opening a case is made by the Head of the FMS after those consultations. The table beneath reflects the CTRs and STRs involved in the cases opened by FMS between 2004 and the date of the on-site visit:

	2004	**2005**	**2006 (Apr.)**	**Total**
Opened cases	47	28	16	91
CTRs involved	3950	9145	4416	17511
STRs involved	152	398	133	683

300. If a decision is made not to open a case (e.g. because existing information is considered insufficient), the analyst keeps the persons involved "under control" in the system ("red flags" appear when such a person appears in another STR/CTR).

301. If a decision is made to open the case, the analyst actively gathers additional information (i.e. letters are sent to monitoring entities, foreign FIUs, administrative bodies to obtain all necessary information on the transaction and persons involved) and analyses it in detail. Additionally there are weekly meetings between management and all analysts of FMS to review progress and set targets in respect of pending opened cases. The average time of such analysis for a money laundering case is said to be 3-4 months though detailed statistics were not provided. In respect of possible terrorist financing reports information, once identified, is provided immediately to the General Prosecutor's Office and the Ministry of Internal Affairs.

302. When the Analytical Department considers a money laundering reference could be made to the General Prosecutor a recommendation goes through line management and a collective decision is made by the Head of FMS and his two Deputies. Even if a decision is made not to refer a case to the General Prosecutor, the information can be reconsidered in the light of new information at a later date.

303. The following cases have been passed to the General Prosecutor. The table beneath shows the numbers of CTRs and STRs involved in the notifications from 2004 to the date of the on-site visit.

	2004	**2005**	**2006** (till April)	**Total**
Cases passed to GPO	5	12	9	26
CTRs involved	1200	3035	756	4991
STRs involved	107	156	53	316

304. The General Prosecutor indicated that of the 26 cases received from FMS, 21 were followed up by investigations of the General Prosecutor's special unit; the remaining 5 cases were followed up by investigations of the Anti Terrorist Centre of the Ministry of Internal Affairs.

2.5.2 Recommendations and comments

305. The examiners consider that the reporting obligation in connection with terrorist financing is limited by the definition of suspicious transaction of Article 2 (h) of the AML Law (limited to persons rather than funds). This could affect the overall efficiency of the FIU as the national centre for receiving, analysing and disseminating all potential disclosures concerning suspected financing of terrorism activities. As noted beneath, the obligations in SR.IV need further clarification (see section 3.7).

306. The FMS is the central body in the AML system of Georgia. Indeed it has the legal responsibility under the AML Law for reviewing the status of the enforcement of the AML Law and, when needed, the FMS is charged with the preparation of further legislative AML/CFT proposals.

307. The arrangements in place to secure the FMS's operational independence appear to be well balanced. The Head is appointed by the President, from a nomination by the National Bank (which ensures professional expertise in this area). Funding by the National Bank does not appear to interfere with its independence, which in any event is protected in Article 6 (2) of the Regulation establishing the FIU. The AML Law has been designed also to underline the independence of the FIU. Funding by the National Bank ensures that it is not lacking in technical and other resources, and is not directly reliant on central government in this regard. The examiners found the staff to be enthusiastic, highly professional, technical experts. Importantly, the FIU has secured the confidence of the financial sector.

308. In their analysis of cases there are in place appropriate and sufficient filters of transaction reports (STRs and CTRs). The number of opened cases, at first sight, appears to be rather low, but when one analyses the numbers of CTRs and STRs involved in each opened case, the figures appear to indicate a generally satisfactory number of opened cases. This indicates that its general analytical work in processing cases is being performed quite effectively. One of the internal practices within the FIU which the examiners noted with approval was the weekly meeting with FIU management and the Analytical Department to monitor pending open cases. In the examiners' view, the FIU has since its inception sent a small but important number of cases to the General Prosecutor. As noted above, all cases sent were the subject of investigations and several have resulted in prosecutions and convictions. It was understood that the General Prosecutor is usually satisfied with the quality of information sent by FMS, though on occasions, further information has had to be requested.

309. There are areas where improvements could be made. The examiners noted that there is some public information on statistics and the work of the FIU available through NBG reports. However, more work could be done by the FMS in producing more detailed public reports and information on typologies and trends to assist the financial sector. The examiners appreciate that work was being undertaken on the preparation of a system of feedback. More needs to be done on this issue to bring a system of feedback into effect. The FIU should keep more detailed statistics to demonstrate the effectiveness of its own work (response times etc.) and which can assist the Georgian authorities generally in monitoring the effectiveness of the AML/CFT system overall.

310. The FIU would also benefit from a power to suspend transactions suspected to relate to money laundering. The FMS has provided considerable instruction on the reporting forms, but they fully accept that more training and seminars to the commercial banks need to be given, particularly in relation to the identification of suspicious transactions.

2.5.3 Compliance with Recommendations 26, 30 and 32

	Rating	Summary of factors underlying rating
R.26	**Largely compliant**	• The efficiency of the FIU could be affected by the limited scope of the reporting obligation for TF. • More public reports with statistics, typologies and trends should be provided.
R.30	**Compliant**	
R.32	**Partially compliant**	Detailed statistics should be maintained to demonstrate the effectiveness of the FIU's work and the effectiveness of the overall AML/CFT system as a whole.

2.6 Law enforcement, prosecution and other competent authorities – the framework for the investigation and prosecution of offences, and for confiscation and freezing (R.27, 28, 30 and 32)

2.6.1 Description and analysis

Recommendation 27

311. The Ministry of Internal Affairs is responsible for the maintenance of public order and State safety. In February 2005, the Ministry of State Security was merged with the Ministry of Internal Affairs. At present the Ministry of Internal Affairs is responsible for the fight against both terrorism and organised crime.

312. The Police are located within the Ministry of Internal Affairs, which coordinates their activities. Georgia has approximately 22,000 policemen. The role of the police in the AML/CFT system is detection and investigation of all crimes and reporting them to the Prosecutors offices. The Office of the General Prosecutor supervises all investigations. It should be noted that Article 62, para. 2 CPC, places the primary investigative competence for money laundering with the General Prosecutor's Office of Georgia.

313. The Police have two dedicated units which deal especially with AML/CTF issues: the so-called *Anti-Terrorist Centre (ATC)* and the *Special Operative Department (SOD)*.

314. The *ATC* is responsible for conducting operative activities aimed at the prevention and investigation of terrorism cases. 35 officers, divided into 3 departments, work in this unit. The staff are trained and co-operate with counterpart units from others countries. So far no terrorist case has been brought, but at the time of the on-site visit two cases, which were passed to them by the *Special Service on Prevention of Legalisation of Illicit Income* (*SSPLII*), were being investigated. Both of these cases involved the provision of funds to foreign terrorist organisations. They were qualified as offences under Article 328 Georgian Criminal Code ("Accession and Assistance to a Terrorist Organisation of a Foreign State or to such Organisation controlled by a Foreign State"). Both investigations are still continuing at the *ATC* in the Ministry of Internal Affairs.

315. The *SOD* is entrusted to fight organised crime, trafficking of drugs, arms and human beings, etc. It is also responsible to provide operative support to the *SSPLII* during investigations of money laundering cases and conducts "operative-searching activities" for the revelation of possible facts indicating money laundering. They co-operate with the monitoring entities and can obtain evidence from them. If they need information from the monitoring entities they apply the search and seizure provisions of the Criminal Procedure Code which require a reasoned application for an order from a judge. In the case of banking information a judge's order is also required under Article 17 of the Law of Georgia on Activities of Commercial Banks and Article 21 of the Organic Law of the NBG.

316. In accordance with Article 55 CPC (as amended), the General Prosecutor's Office conducts criminal and legal prosecution. In order to accomplish this function, the Prosecutor's Office shall:

- exercise procedural guidance in respect of investigation at the pre-trial stage;
- exercise supervision over the operative intelligence activities;
- pursuant to the rules and in the cases provided by the CPC, carry out the full-scale preliminary investigation of the committed crimes and unlawful acts;

- support the public prosecution in courts, pursuant to the rules and in the cases provided by the CPC;
- take civil actions and
- appeal against illegal and unreasoned sentences and other judgments.

317. At the end of 2003, the *SSPLII* was established within the General Prosecutor's Office of Georgia and from the beginning of 2004 it commenced its work. The main tasks of this Service are the prosecution of particularly sensitive money laundering offences, both at the stage of investigation and at trial. There are 9 staff in this unit (see beneath). If a case appears to be linked with money laundering, this Special Service takes over the investigation. So far the Special Unit has had no case where it has not been responsible for the overall investigations and prosecutions of both the predicate and the money laundering offence. If, as noted beneath, there is a need to transfer cases between investigative organs in Georgia, this can be effected by the General Prosecutor so that predicate offences and money laundering could be investigated together. The Decree from 8 June 2004, N 31-c, "On Strengthening Certain Measures for Fighting Illicit Income Legalisation" from the General Prosecutor of Georgia, the Minister of Finance of Georgia, the Minister of Internal Affairs of Georgia and the Minister of State Security of Georgia stipulates in para. 1. that the investigation departments of the Ministries of Finance, Internal Affairs and State Security shall ensure the immediate forwarding of cases, which include characteristics of a money laundering crime, to the *SSPLII* with the intention of further investigation. Furthermore, the investigation authorities are obliged, to provide the *SSPLII* with complete information and materials on these cases. At the time of the onsite visit, the *SSPLII* had 11 pending cases – 10 of them were said to result from reports of the FMS, and one from the Police. It has also sent a few cases to other appropriate prosecution offices. Additionally it has investigated (on its own initiative) 15 criminal cases concerning money laundering. 15 persons have been subjected to criminal prosecutions. As previously noted, all of them have been convicted (of which 12 pleaded guilty). Court proceedings were about to be concluded in respect of 3 persons and 4 persons were wanted.

318. Another unit in the General Prosecutor's Office which can deal with money laundering cases is the *Investigative Department*. It is responsible for investigations, including financial investigations and corruption offences (on the basis of Art. 62 CCP – see Annex 5). It is headed by the Deputy Prosecutor General, has 3 deputies, 5 senior prosecutors, 6 prosecutors, 5 senior investigators and 16 investigators. The Investigative Department has jurisdiction over the whole of government controlled territory of Georgia, while the regional units are limited to their geographic boundaries. The Prosecutor General (or the Deputy Prosecutor General) is entitled to move a case from one unit to another. Prosecutors from the Investigative Department appear before the court of appeal on behalf of the regional units.

319. The National Security Council (NSC), as noted, is responsible for policy making concerning antiterrorism issues, and is not involved in investigations. Its legal basis can be found in several provisions in Georgian Constitutional Law and in the "Organic Law on the Security Council". 28 persons within the NSC were responsible for coordination, strategy and monitoring in the area of national security but it was understood that this had now reduced to 10 persons. They co-operate with other authorities but the role of coordination is rather small. The NSC also receives the lists of terrorists from the UN. At present, it has no database concerning information from other units, especially from other law enforcement authorities, but it is preparing its own database which was expected to be finalised during 2006.

320. The examiners were advised that on 25 March 2005, the Criminal Procedure Code of Georgia was considerably amended. The inquiry stage was removed and the 20-day time limit for information gathering was abolished. Currently Article 271 CPC ("Terms of Preliminary Investigation") states that preliminary investigations should be conducted in a reasonable time, but should not exceed the term of the statute of limitations provided for the relevant crime.

This enhances the capacities of law enforcement to conduct complete and thorough investigations (including in money laundering cases), in particular with a more systematic investigation into the financial dimension. The statute of limitation for all money laundering investigations is 10 years and for financing of terrorism also 10 years though it rises to 25 years where committed in aggravating circumstances.

321. It was unclear if the Georgian authorities had considered taking formal measures, which allow competent authorities investigating money laundering cases to *postpone* or *waive the arrest* of suspected persons and/or the seizure of the money for the purpose of identifying persons involved in such activities or for evidence gathering. There are provisions for controlled delivery in Article 1, para. 2 (e) of the Law of Georgia "on Operative Searching Activities", which can cover money or cash. The relevant Law appears silent on the issue of postponing or waiving the arrest of suspected persons and/or the seizure of money, though it appears that this follows from the availability of controlled delivery. The Georgian authorities indicated that controlled delivery was an investigative technique which had been used for offences other than money laundering, without challenge.

322. The police authorities co-operate with Interpol. They sent 6 requests in 2005 and 4 up to 24 April 2006, as well as 2 police agencies of other countries (i.e. Moldova and Ukraine).

Additional elements

323. According to Article 7, para. 2, of the Law of Georgia "on Operative-Searching Activities", which governs the open and secret actions and investigative methods which can be employed by State agencies, etc. (Annex 12), Georgian law enforcement authorities can use the following various investigative and special investigative techniques, including:

- questioning of citizens;
- gathering notes (information) and visual control;
- controlling purchase;
- controlled delivery;
- examination of subjects and documents;
- identification of a person;
- censorship of correspondence of detained, arrested or convicted person;
- upon court decision: secret listening and taping of phone conversations, gaining information from the channel of communication (by connecting to the means of communication, computer networks, linear communications and station apparatus), control of post-telegraph staff (except the diplomatic post);
- upon court decision: secretive audio-video taping, making of films and photos; electronic surveillance by technical means, use of which does not cause any danger to persons life, health and environment;
- involvement of a collaborator or operative officer (undercover agent) in the criminal group according to the established rule.

324. These techniques are said to be used during money laundering and terrorist financing investigations. However, the Georgian authorities were not able to provide the evaluators with information on the number of occasions in which such techniques were used. Similarly they were not able to provide information in respect of joint investigations and /or cooperative groups working on these cases.

325. The following techniques are only allowed under a judge's order or a court ruling:

- inspection of a residential apartment or other property without the consent of the owner,

- search, levy (similar to compulsory production of items), seizure of postal and telegraphic correspondence, postal parcels, their inspection (and levy),
- interception of telephone conversations and withdrawal of information from other communication channels,
- the seizure and forfeiture of property.

326. In urgent cases (as prescribed by law), inspection of a residential apartment or other property without the consent of the owners, as well as search, and levy may be effected without a judge's order subject to the requirement that, within 24 hours, the judge is advised either for attesting the legality of the action or to declare it unlawful. At the same time, the judge shall decide on the admissibility of the obtained evidence. All the above-mentioned investigative techniques may be used in money laundering or terrorist financing investigations.

327. The Georgian authorities indicated that Law Enforcement authorities, the FIU and competent authorities can share information including on money laundering and financing of terrorism methods, techniques and trends, though there are no regular meetings or dissemination of such information between the competent authorities. While co-operation between the FMS and the *SSPLII* at the working level seemed satisfactory, more coordination on these issues by all the relevant bodies is required to ensure that money laundering trends, techniques and methods are reviewed on a regular inter-agency basis.

Recommendation 28

328. Article 7 section 3, of the AML Law obliges monitoring entities to record and store information (documents) in a way such that all its data fully reflects the concluded or implemented transactions, so that, when needed, this information may be used as evidence. The authorities which are responsible for investigating money laundering and financing of terrorism cases have the power to compel production of, search persons and premises for and seize and obtain transaction records, identification data obtained through the CDD process, account files and business correspondence, and other records, documents or information, held or maintained by financial institutions and other businesses or persons under a judge's order after substantiation of the reasons for this investigative act (Article 13 CPC). This information may be used in money laundering / financing of terrorism investigations and prosecutions and in related actions to freeze, seize and confiscate the proceeds of crime. As noted earlier, Article 193 CPC allows the enquirer, investigator or prosecutor to conduct investigative acts in banks and other financial institutions. The Law of Georgia on Activities of Commercial Banks under Article 17 (2) (banking confidentiality) contemplates information on operations, balances, and accounts of any physical or legal persons being disclosed to the FMS (under the relevant legislation) and "other persons" pursuant to a court's decision. For these purposes, other persons are investigators and prosecutors.

329. Article 94 CPC describes the rights and obligations of witnesses. A witness is *inter alia* obliged to appear upon a summons of an investigator, prosecutor or court. He has to give truthful testimony with regard to the facts known to him relevant to a case and answer the questions put to him. If a witness fails to appear without a valid reason, he may, in compliance with the procedure established in Article 176, be subjected to compulsory attendance. In the event of non-appearance, non-compliance with court rulings, violation of an order during the hearing of the case and contempt of court a witness may be fined at the rate of ten times the minimum wage (Article 208). The investigators and / or prosecutor, etc. are entitled to take a witness statement, though the witness has the right to prepare his own statement.

330. For a refusal to give evidence or for deliberately giving false evidence a witness will bear criminal responsibility under Articles 371 and 372 of the Criminal Code of Georgia (but a witness is not obliged to testify against himself or close relatives).

Recommendation 30

331. The Prosecutors' Offices of Georgia are structured as follows:

- General Prosecutor's Office of Georgia,
- District Prosecutor's Offices – 30,
- Regional Prosecutor's Offices – 7,
- Tbilisi City Prosecutor's Office,
- Prosecutor's Office of the Autonomous Republic of Adjara.

332. The General Prosecutor's Office is well-equipped and structured.

333. The *Special Service on Prevention of Legalisation of Illicit Income (SSPLII)* which has within the prosecutors' offices the primary competence for prosecuting/investigating money laundering cases (see above) is staffed with 5 prosecutors, 2 deputies and 2 advisors (for financial and for banking matters). The staff of this special unit was selected with particular care for their professionalism and integrity. All of them went through an in depth process of verification, including polygraph tests. The *SSPLII* has modern technical equipment and provides also training for prosecutors in a special training centre. However, as noted earlier, the evaluators advise that there should be more guidance for all prosecutors on minimum evidential requirements to commence money laundering cases, and on the importance of and practices in relation to freezing, seizing and forfeiture proceedings.

334. The *Investigative Department*, which deals with some money laundering cases, is headed by the Deputy Prosecutor General, has 3 deputies, 5 senior prosecutors, 6 prosecutors, 5 senior investigators and 16 investigators.

335. The structure of the Georgian Police is outlined above.

336. The evaluators were satisfied that there is a close cooperation between the FMS and the *SSPLII*. All STRs which appear suitable for further money laundering investigation are discussed before commencing a criminal investigation (though there are no guidelines from the Prosecutors to FMS deciding which STRs may have sufficient information for starting investigations). A high percentage of money laundering cases were commenced on the basis of the information of the FMS. Only 2 cases were started on the basis of reports from the *SOD*.

337. The Georgian authorities advised that the *Anti-terrorist Centre*, the *Special Operative Department* of the Ministry of Internal Affairs of Georgia and the *Special Service on Prevention of Legalization of Illicit Income* of the General Prosecutor Office of Georgia are being provided with training on a regular basis in respect of money laundering and terrorist financing issues, though no details of the courses were provided. The prosecutors and investigators the team met understood the need for high professional standards and seemed generally to be appropriately skilled, though, as has been indicated, more training is required, particularly in respect of the levels of evidence required to prove the predicate offence in autonomous money laundering cases, and in relation to the application of the new provisions in the Criminal Procedure Code on freezing, seizing and forfeiture. The status, ethical and behavioural norms for policemen, prosecutors, judges and other public officers are now regulated by the following laws: Law on Public Service, Law on Conflict of Interests and Corruption in Public Service, Law on Special State Ranks, and the General Administrative Code. The State Minister with whom the team met emphasised that police reform had been a high priority for the present Government. As noted, a

Code of Ethics for the Ministry of Internal Affairs was in preparation. A Code of Ethics for prosecutors was approved by the General Prosecutor on 19 June 2006. Its purposes are *inter alia* to strengthen personal responsibility inherent in the position of prosecutors, to ensure protection of human rights and to contribute to the impartial administration of criminal justice. Annual property declarations are in place for prosecutors.

Additional elements

338. The evaluators were advised that judges had been provided with specific training concerning money laundering and terrorist financing issues.

Recommendation 32

339. As noted above, statistics concerning money laundering cases in the investigative stage are kept by the *SSPLII*. The statistics on verdicts is kept by the statistics department of the Supreme Court. This department updates the data every 3 months. The statistics are only kept about (final) convictions. As noted earlier, they do not provide information concerning the underlying predicate offences.

340. Though the prosecutors supervise all investigations conducted by the police, the effectiveness of coordination of the Georgian system still needs to be improved as there appeared to be no reliable statistics concerning the number of money laundering investigations generated by the Police / prosecution.

2.6.2 Recommendations and comments

341. There are clearly designated bodies with responsibility for money laundering and financing of terrorism investigation. Indeed quite sound structures have been put in place now for the investigation of money laundering and financing of terrorism and the human resources allocated appeared to be adequate at present. The creation of the *SSPLII* is a particularly welcome development. As has been noted, there have been some successful money laundering prosecutions and some confiscation orders. The investigators and prosecutors now appear to have most of the basic legal powers to investigate money laundering (and financing of terrorism), and to seize and obtain information from all financial institutions at early stage in enquiries. It appeared that, apart from the possibilities of the FMS as described under Section 2.3, only historical banking and financial information could be obtained (which meets the criterion in Recommendation 28). It would be helpful to consider the introduction, in appropriate cases, of (prospective) monitoring orders in respect of bank accounts (and perhaps accounts held in other financial institutions) in the process of acceding to the new Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the financing of Terrorism (CETS N. 198). While it was not entirely clear whether they could postpone or waive arrest or seize money for the purpose of identifying persons involved in such activities (or for evidence gathering), it was recognised that the Special Investigative Technique of Controlled Delivery is in place which may indicate that power to postpone arrest is available, but this could not be confirmed. Special Investigative Techniques similar to many other countries are available.

342. The recent changes to the CPC means that there are longer periods available now for money laundering investigations, particularly financial investigations. The legal structure to confiscate direct and indirect proceeds is in place and freezing can be applied to all property that is subject to forfeiture (including property on the principle of value based confiscation). The innovative forfeiture procedures in respect of public officials and organised criminal groups outlined earlier

are potentially very important. However, all these changes were very new and had yet to become embedded in the system. It is necessary that all those who investigate and prosecute money laundering cases and serious proceeds-generating predicate offences fully understand the opportunities provided by recent legislative changes and use them. As has been noted not many money laundering cases emanate from law enforcement at present and more police / prosecutor – generated money laundering cases need to be pursued. To achieve this, more training is required for prosecutors, judges and investigators on the practice and procedures involved and the importance of forfeiture and provisional measures (taken at early stages in proceedings) in the fight against acquisitive crime generally and organised crime in particular. For there to be identified proceeds to forfeit there needs to be routine financial investigation in major proceeds-generating cases. In this context, consideration could be given to a special regulation / guideline to prosecutors and investigators that the financial aspects should be routinely investigated in major proceeds-generating cases and that early freezing and seizing orders should be routinely obtained with a view to subsequent confiscation orders. This should be coupled with training on modern financial investigative techniques for relevant prosecutors and associated police personnel. In this way, more police and prosecutor-generated money laundering investigations should also occur. The examiners consider that more emphasis on non-FMS money laundering generated cases needs to be given. Moreover, as noted in 2.1 most money laundering cases are currently associated with the predicate offence and the efficiency of autonomous money laundering prosecution (particularly in respect of foreign predicates) is untested. More emphasis needs to be placed on autonomous money laundering by prosecutors and investigators.

343. It was not always clear that all law enforcement agencies fully coordinated to share information on money laundering and financing of terrorism trends and techniques or to review them on an interagency basis. However, co-operation between FMS and *SSPLII* at a working level appeared satisfactory.

344. Statistical information was generally provided at the examiners' request and it was clear that otherwise much of the information provided was not readily available for periodic domestic review of performance. The statistical information on money laundering and terrorist financing cases was sometimes insufficient and did not always provide a clear and necessarily accurate picture of the current situation. Statistics could, in the examiners' view, helpfully cover (a) the predicate offences involved in money laundering investigations, prosecutions and convictions (b) which cases are own proceeds laundering and which are prosecuted together with the predicate offence, (c) which ones are prosecuted autonomously, (d) which convictions are already in force and which are being appealed and (e) prosecutions pending. In the evaluators' opinion, an electronic database on court and prosecution cases could be helpful in this regard.

2.6.3 Compliance with FATF Recommendations

	Rating	Summary of factors underlying rating
R.27	**Partially compliant**	• There are designated law enforcement bodies in place to investigate money laundering and terrorist financing with most investigative tools but the effectiveness of investigation / prosecution of money laundering has yet to be fully tested in respect of autonomous money laundering cases (particularly foreign predicates). • Power to postpone or waive arrest or seize money in the circumstances specified in Criterion 27.2 needs clarifying.
R.28	**Compliant**	
R.30	**Largely compliant**	• Law enforcement and prosecutors need more guidance and training on the minimum evidential requirements to commence money laundering cases; • Greater training and familiarisation with the new forfeiture and seizure provisions and on financial investigation techniques generally is needed.
R.32	**Partially compliant**	• Statistical information concerning money laundering and terrorist financing investigations, prosecutions and convictions should be kept up to date and more comprehensive (i.e. to show the relevant predicate offences, which cases are own proceeds laundering, which money laundering cases are prosecuted together with the predicate offence and which ones are prosecuted autonomously). • Convictions statistics should include those where an appeal is pending.

2.7 Cross Border Declaration or Disclosure (SR IX)

2.7.1 Description and analysis

345. The Customs Service exists as a Department under the Ministry of Finance of Georgia. The basic regulation of cross-border transportation of goods (including cash and securities) remains regulated under the Georgian Customs Code, which dates back to 1997, which, together with the Rule for Completion of the Customs Declaration Form N. 2, the Rule on Customs Declaration of Physical Persons approved under Decrees N. 218 (4 April 2005) and N. 221 (5 April 2005) of the Minister of Finance, make cross-border transportation of goods, including cash and securities, the subject of declarations.

346. There is a General Customs Declaration Form (the one for private persons is annexed as 13). The Law since 1 January 2006 obliges persons to fill in this declaration form and make a truthful declaration, which also extends to jewellery, precious metals and stones, antiquities, etc. Completion of the declaration is, however, generally considered to be a voluntary exercise in practice even though it is intended to be obligatory. There is no financial threshold for declarations under the Customs Code. If a person fails to make a declaration or does make a declaration which is checked and is found to be false, then sanctions can be applied by the Customs, according to Article 193 of the Administrative Breaches Code. Given that there is no financial threshold, Customs advised that there was no reason to fail to make declarations or to make false declarations.

347. There is thus no limitation under the Customs Code other than to make a truthful declaration. How many declarations are actually made in practice by individuals is unknown. Customs indicated that it is impossible to control every individual. It appeared that their first priority was cargo rather than individuals.

348. Overlaying this, the AML Law now makes Customs authorities a monitoring entity (Article 3 letter f). A specific obligation on Customs is set out in Article 5 section 3, which provides that Customs are required to monitor the import and export of "monetary units" exceeding 30,000 GEL (or its equivalent in other currency). It is assumed that the drafting of the Law and the Regulation under it is such that it was intended that Customs should report suspicious transactions or other facts relating to legalisation or financing of terrorism. In any event, Customs have no indicators to assist them in so doing, and have made no suspicious reports, either in relation to legalising illicit income or in relation to persons likely to be connected with terrorism. Customs do receive the terrorist lists from FMS, but how they were disseminated within the Customs Service generally was unclear.

349. The general declaration system was thus being used by Customs in practice to support their monitoring obligation under the AML Law. Detailed obligations upon the Customs are set out in Article 4 of the "Regulation on approving the Regulation on Receiving, Systemising and Processing the Information by Customs Authorities and Forwarding to the Financial Monitoring Service" approved by Decree 152 of the Head of the FMS on 16 November 2004 (Annex 14). These obligations include the appointment of employees in charge of monitoring in the Customs Department or the creation of structural units. The relevant forms should be submitted within 3 working days of the person crossing the border (Article 7), or, where this is not possible within the time, by e-mail or other electronic means. The Customs authorities have formally put in place a special regulation "on Internal Instructions of Monitoring of Cross-border Transportation of Cash" (Decree 171, 18 May 2001) but there were only two reports made by Customs to the FMS at the time of the on-site visit, based on voluntary declarations. After analysis by the FMS, these reports were not forwarded to the General Prosecutor, though remain in the FMS database.

350. The Customs authorities have power under Article 111 of the Customs Code to stop and temporarily restrain goods and vehicles when a person does not fill in a truthful declaration. Customs controls comprise examination of documents and certificates for Customs purposes: controls on goods, body searches, and verbal interrogation (Article 123 Customs Code). According to Article 101 Customs Code, the competent Customs authorities are entitled to demand the disclosure of private articles of persons within the Customs control area. The requested person is obliged to assist and reveal private articles and allow vehicles to be searched. A Senior Customs officer has to advise the requested person of his rights and offer him the chance of a voluntary disclosure of goods before a search.

351. In the case of a false declaration, the Georgian authorities indicated that under an internal regulation of Customs the details of the correct amount of money or identification data of the bearer negotiable instruments and the identification data of the carrier is noted down and retained. If the amount is below 30,000 GEL, this information would not be sent to the FMS. So information on any false declarations would not be available to FMS. False declarations or failure to make declarations may lead to a fine of 500 to 800 GEL, with or without the seizure of undeclared goods. Repeated violations result in a fine of 1,000 to 1,500 GEL, together with seizure of undeclared goods (or without it). These sanctions are not considered to be particularly dissuasive. The number of sanctions imposed is not known, though, as noted earlier, the Customs consider there is little reason to make false declarations.

352. It seems to the evaluators that the Customs do not have the authority to request and obtain further information from the carrier with regard to the origin of the currency or bearer negotiable instruments and their intended use. It also seems to the evaluators that the Customs do not have the power to stop or restrain currency or bearer negotiable instruments for a reasonable time in order to ascertain whether evidence of money laundering or terrorist financing may be found where there is a false declaration. The Georgian authorities advised that Financial Police operative staff are generally available at each check point and that they would have the powers under the Law on Operative Searching Activities to detain a person crossing the border suspected of money

laundering or terrorist financing, but it was unclear to the examiners if and how this would work in practice, or how the Customs would identify such persons in the first place so as to notify other law enforcement bodies. When asked how they determine whether a person should be controlled / monitored under the Regulations pursuant to the AML Law, they were uncertain, essentially acting on intuition. No information was provided which indicated that any person had been detected at the borders with suspected proceeds from, or instrumentalities used or intended for use in the commission of money laundering or terrorist financing or any other predicate offence, or that any seizures had taken place with a view to further prosecutorial investigation. Objects that are prohibited under the Law such as drugs, offensive weapons are said to be capable of being seized at the border by the State Border Security Department (Border Police), who also work in conjunction with Customs. Though, again, the modalities of this were unclear.

353. With regard to domestic coordination between Customs, immigration and related law enforcement authorities, the Georgian authorities pointed to the proximity of the Financial Police and the Border Police at border-crossings. However no information was provided on interaction between these bodies (or the Anti-Terrorist Centre) or on how coordination worked in practice.

354. The Customs authorities advised that they were actively involved in international co-operation and the preparation of draft agreements in the Customs field, as a result of Decree N. 269 of the Minister of Finance from 2002. The Georgian authorities advised that the Customs have signed MOUs with all CIS countries and several EU countries, though statistical information on the amount of international co-operation between the Georgian Customs and foreign counterparts was not available.

355. There is space on the declaration form for the provision of information on precious stones, but the examiners understood the Customs do not ask about this, and thus the issue of notifying the Customs Service or other competent authority of the country of origin or destination of the precious stones about such cross-border movements would not arise.

Additional elements

356. The best practices paper for SR.IX had not been implemented so far. Technical equipment in the Customs was of a low level.

2.7.2 Recommendations and comments

357. It is necessary to put the treatment of SR.IX into context. At the time of the second evaluation report (and today) smuggling was considered by many as a major generator of criminal proceeds. The previous examiners considered that a renewed effort should be made with an adequately resourced Customs Service to detect smuggling and cash couriers, carrying cash or bearer negotiable instruments that are suspected to be related to money laundering. The Georgian authorities were encouraged to sensitise and train Customs Officers in the detection of these matters. Specifically the examiners recommended that an effective system to detect the physical cross border-transportation of currency and bearer negotiable instruments. That report, of course, recognised that detection of these issues by Customs Officers presupposes that the work of this (or any other law enforcement) unit is not distorted by corruption.

358. Since the second evaluation, some small steps have been taken to comply with SR.IX and the Georgian authorities indicated that there had been a radical reduction, since 2003, of corruption in the Customs Service. In 2005, more than 300 staff had been arrested for corruption offences, and the Customs Service was, at the time of the on-site visit, undergoing a serious reform process.

Customs Headquarters was working with international experts with a view to designing and drafting a new Customs Code, and adopting new working methods.[31]

359. At the time of the on-site visit, the obligations on Customs under the AML Law were totally inoperable and inefficient. The number of reports received by FMS are clearly only a tiny fraction of cross-border cash movements exceeding 30,000 GEL.

360. The two reports made to the FMS were not as a result of detected illegal transportations but voluntary declarations of the carrying of amounts above 30,000 GEL. The Customs need guidance on identifying suspicious cross border transportations and information from which they can monitor high risk persons. The creation of an effective information database is a priority. The examiners were advised that Customs do not, at present, compile lists of "at risk" groups for monitoring. In this regard, the coordination between the FMS and Customs needs further developing if they are to be mutually supportive.

361. Moreover, there appears to the evaluators to be no competent authority with a clear power to request and obtain further information from a carrier, with regard to the origin of currency or bearer negotiable instruments or their intended use. It seemed to the evaluators that arrangements, if any, for stopping and restraining currency or bearer negotiable instruments for a reasonable time in order to ascertain whether evidence of money laundering or terrorist financing may be found were not in place or were ineffective. The only procedure which was clearly in place, so far as Customs was concerned, was that which allowed them to stop goods on the border where persons did not fulfil declarations. Clearer coordination arrangements with other enforcement bodies involved at the border need to be put in place.

362. The Customs authorities therefore remained, despite the requirement of monitoring under the AML Law, basically disengaged from the fight against money laundering and financing of terrorism. They saw their (limited) role as the delivery or transfer of information to the FMS, although they had not put in place an effective system to meet the requirements of the FMS Regulation of 16 November 2004. Monitoring for money laundering or financing of terrorism purposes still did not seem to be a high priority.

363. In the ongoing reform process, the mission of Customs and their powers to comply with the FMS Regulation (and to enforce SR.IX) need urgent review, as, from the point of view of money laundering and financing of terrorism, the borders remain very insecure. A clear and effective system to stop and restrain persons crossing the border suspected of being involved in money laundering and financing of terrorism (regardless of thresholds) needs to be put in place. A programme to sensitise and train Customs officers in the identification of money laundering and financing of terrorism in the context of cross border activity is required. It is welcome that so much effort has been put into tackling corruption in the Customs Service, but the present examiners can only endorse the views of the second evaluation team – that there should be put in place an effective system to detect the physical cross-border transportation of currency and bearer negotiable instruments, as required by SR.IX, and the essential criteria under the 2004 AML/CFT Methodology.

[31] A new Customs Code was adopted by Parliament on 25 July 2006 and it was brought into force on 1 January 2007.

2.7.3 Compliance with Special Recommendation IX

	Rating	Summary of factors underlying rating
SR.IX	**Non compliant**	• The monitoring by Customs of monetary units in excess of 30,000 GEL provided for in the AML Law and by Customs Decree is wholly ineffective in operation; • FMS needs full information on the levels of cross-border cash movements and at present has hardly any; • The sanctions regime for breaches of the Customs Code is not dissuasive; • A clear and effective system needs to be put in place to stop and restrain currency or bearer negotiable instruments for a reasonable time in order to ascertain whether evidence of money laundering or terrorist financing may be found; • Clearer coordination arrangements with other law enforcement bodies involved in cross-border issues should be put in place to ensure that SR.IX is fully implemented; • A database including lists of high risk groups needs creating, and Customs need sensitising and training to detect cross-border movements associated with money laundering and financing of terrorism.

3 PREVENTIVE MEASURES - FINANCIAL INSTITUTIONS

364. In Georgia, as noted earlier, there is a hierarchy of normative acts. In the context of the Methodology criteria marked with an asterisk are basic obligations that should be set out in law or regulation. In this context, "law or regulation" refers to primary and secondary legislation, such as laws, decrees, implementing regulations or other similar requirements, issued or authorised by a legislative body, and which impose mandatory requirements with sanctions for non-compliance. Separate to laws or regulations are "other enforceable means" like Recommendations, guidelines, instructions or other documents or mechanisms that set out enforceable requirements, with sanctions for non-compliance, and which are issued by a competent authority (e.g. a financial supervisory authority).

365. In Georgia there is primary legislation passed by Parliament and signed into law by the President. Primary legislation includes *inter alia* the AML Law, the Civil Code, the Law of Georgia on Activities of Commercial Banks, in all of which certain FATF Recommendations are given some treatment. Primary legislation sometimes empowers specific bodies, such as the FMS and the supervisory authorities, to make Regulations, which are issued by decrees (by-laws), and which the Georgian authorities consider generally to be secondary legislation. The legal basis for the Head of the FMS to issue Decrees is in the Law on Normative Acts. Whether the requirements of any Decrees can be considered as secondary legislation containing mandatory requirements authorised by a legislative body depends on the language of the empowering provision. Article 10, section 4 (c) AML Law specifically authorises the FMS to issue "normative acts on the conditions and procedures for receiving, systemising, processing and forwarding the information and identification of the entity" (emphasis added). While there are no sanctions provided for in the AML Law, Article 15 (5) requires supervisory bodies to issue Regulations on the definition and application of sanctions (including financial sanctions) against monitoring entities for violations of "this law and normative acts adopted on its basis". The FMS Regulations could, arguably, be considered as a whole as secondary legislation, in the context of the Methodology, as the detailed obligations in them, which have been delegated, have (albeit in general terms) been considered by a legislative body. The power granted to the FMS to issue Regulations on procedures for systemising, processing and forwarding information appears quite explicit in the AML Law, and Regulations on these issues could qualify as secondary legislation. However, the reference in the AML Law to the power of the FMS to make Regulations on "identification" is considered to be very general indeed. In respect of the identification parts of the FMS Decrees, there is a strong argument that the delegated authority is too general and that the FMS Regulations are really "other means" on these aspects. Whether the obligations are sanctionable depends on the supervisory authority having issued a sanctioning Decree. For example, in the FMS Decree 95 for the Commercial Banks, sanctions for violations of norms and requirements of the AML Law and the FMS Regulation are reserved to the NBG.

366. Decrees and Regulations of other supervisory authorities appear to be made by reference to a general delegation by the legislative body to them to make Decrees. Article 73 of the Organic Law of Georgia (Annex 10) on the National Bank states that in carrying out its tasks the National Bank shall enjoy autonomous independent regulatory powers. The content of the Regulations does not seem to have been considered (however generally) by a legislative body, and thus appear to be "other enforceable means".

367. In practice this issue is somewhat academic. The difficulties the examiners experienced were not generally in establishing the legal quality of the instrument in which an obligation is found, but that the obligation itself was either, unclear, deficient, or missing. In the text beneath, reference is made to criteria marked with an asterisk. Where these criteria have not been found by the evaluators in a Georgian instrument, or are unclear, it is advised, in the context of Georgian legislation, that they be embedded in clear terms in the AML Law, with sanctions for non-compliance. Where reference is made to the need for other criteria to be required at least by "other enforceable means", this does not preclude the use of Instructions, Rules, etc. issued under Decrees, so long as the obligation is capable of being sanctioned.

368. The basic obligations under the AML Law cover some aspects of:

- Customer identification (Article 6);
- Record keeping (Article 7);
- Identifying transactions subject to monitoring (Article 5);
- Reporting transactions subject to monitoring (Article 9);
- Keeping information confidential (Article 12);
- Establishment of Internal Procedures and Units for AML/CFT Control (Article 8).

Customer Due Diligence and Record Keeping

3.1 Risk of money laundering / financing of terrorism

369. The Georgian AML/CFT framework is not based on a risk assessment. Neither the AML Law nor other regulations (e.g. FMS Decrees) provide for financial institutions measures based on the degree of risk attached to particular types of customer; business relationship; transaction and product.

3.2 Customer due diligence, including enhanced or reduced measures (R.5 to R.8)

3.2.1 Description and analysis

Recommendation 5

370. Under the AML Law, natural and legal persons subject to the AML/CFT requirements are defined as "monitoring entities".

371. According to Article 3 of the AML Law, the following financial institutions are defined as "monitoring entities":

- Commercial banks;
- Currency exchange bureaus;
- credit unions (the law uses the term "non-bank depository institutions", Article 1 of the "Law Of Georgia On Non-Bank Depository Institutions – Credit Unions", Annex 15)
- Broker companies and securities' registrars;
- Insurance companies and non-state pension scheme founders;
- Postal organisations.

Postal Organisations are included in the list of financial institutions for the reason that the Georgian Postal Organisation, which is owned 100% by the State of Georgia, is authorised to carry out wire transfers. All the activities carried out by the financial institutions as described

in the FATF glossary are covered, except trust and portfolio manager companies and collective investment managers, since these types of services do not exist in Georgia.

Anonymous accounts and accounts in fictitious names

372. Criterion 5.1 of the Methodology is marked with an asterisk. This means that it belongs to the basic obligations that should be set out in a law or regulation.

373. On 23 July 2003, Article 875 of the Civil Code of Georgia was amended (Annex 7) with the following wording: "While issuing a savings book, the credit institution shall be obligated to fill it on the named person (specific person)". According to this provision, the evaluators were informed that it was from then on prohibited for banks and credit unions to open anonymous accounts. However, at this time in Georgia only two anonymous accounts with US$ 20,000 and US$ 17 existed. After the introduction of these changes to the Civil Code, those anonymous accounts were quickly closed and there are no more anonymous accounts in the Georgian banking system.

374. According to Article 13 para 1 of the "Law of Georgia on Non-Bank Depository Institutions – Credit Unions", credit-unions are allowed to receive deposits exclusively from their members.

375. As regards banks, a noted above, saving books can be issued only on names (Article 875 of the Civil Code of Georgia). The Georgian authorities advised that accounts can be opened only by banks and credit unions and not by other financial institutions. The Georgian authorities indicated that opening anonymous accounts or issuing anonymous certificates is now not possible due to a combination of:

- Article 875 of the Civil Code of Georgia;
- Article 6 AML law, which provides that banks and credit unions are obliged to carry out identification of all clients (both natural and legal persons) and to ensure their identity, including the third person on whose name the account is opened;
- NBG Decrees N. 51, 75 and 76, which provide rules for commercial banks (on account opening generally) and Article 2 NBG Decree N. 220, which covers rules for the completion of settlement documents.

376. However, no provision explicitly prohibits opening anonymous accounts, though the evaluators were advised that this is not done in practice.

377. The examiners have noted that other financial institutions are said not to be capable of opening accounts. Nonetheless, the examiners consider that there should be a provision explicitly prohibiting the opening of anonymous accounts or accounts in fictitious names in respect of all financial institutions which are able to keep accounts for physical and legal persons.

378. There are no numbered accounts in Georgia.

Customer due diligence

When CDD is required

379. Criterion 5.2 has an asterisk too. It requires all financial institutions to undertake CDD when:

a.) establishing business relations;
b.) carrying out occasional transactions above the applicable designated threshold (USD/€ 15,000). This also includes situations where the transaction is carried out in a single operation or in several operations that appear to be linked;
c.) carrying out occasional transactions that are wire transfers in the circumstances covered by the Interpretative Note to SR VII;

d.) there is a suspicion of money laundering or terrorist financing, regardless of any exemptions or thresholds that are referred to elsewhere under the FATF Recommendations; or
e.) the financial institution has doubts about the veracity or adequacy of previously obtained customer identification data.

380. The AML Law has introduced basic customer identification obligations but has not implemented full customer due diligence (CDD) requirements, which comprehensively and clearly cover both the identification and the verification process, as provided for in the FATF Recommendations.

381. Under Article 6 section 1 of the AML Law (under the heading of obligations of monitoring entities to register documents on transactions), financial institutions are obliged to identify all clients including representatives and agents, as well as third parties on whose behalf the business relationship is established or in favour of whom the transactions are made. In addition, Article 6 section 2^1 states that it is prohibited for financial institutions to provide clients with any kind of services or to establish a business relationship without preliminary identification of customers (Article 5 section 7 contains a comparable provision).

382. According to Article 6 section 2 of the AML Law, banks are obliged "to ensure identification of all entities[32] opening a bank account, or all representatives authorised on its opening or disposal and the third person on whose name the account is opened". To engage banking operations other than opening accounts, such as sending and receipt of money transfers, banks are obliged to identify the clients before carrying out the operations (Article 6 section 3 of the AML Law).

383. Turning to other parts of the financial sector, currency exchange bureaus are required - before processing an exchange operation - to identify all clients (Article 5 section 7 and Article 6 sections 1 and 2^1 AML Law; Article 6 section 4 FMS Decree N. 96). The evaluators were assured that customer identification requirements are applied for all clients of exchange bureaus, but the evaluators have some concern as to whether this is always done in practice. The Georgian authorities indicated that the NBG carries out onsite inspections concerning customer identification in currency exchange bureaus. As noted later in the report, the services rendered by exchange bureaus without prior identification have been subject to numerous sanctions at various levels, including fines and four revocations of licences.

384. Representatives of the insurance industry told the evaluators that they consider the customer identification procedure (especially the information and documents which are required for a proper identification process) for deals with low amounts as "severe". Though they are conscious of the risk of ML/FT, they would wish to have - for developing the insurance industry – simplified identification requirements for certain types of operations (in terms of clients and products).

385. For credit unions the customer identification requirements are easier to fulfil, because in order to operate through them, a membership of the credit union is required, which comprises a detailed and comprehensive identification process.

386. CDD under criteria 5.2 (c), (d) and (e) are not explicitly provided for in the AML Law. With respect to the AML Law, the Georgian authorities took the view that identification of clients is required in these cases because customer identification has to take place any time before a transaction is implemented, a service is provided or a business relationship is established (regardless of a suspicion of ML/FT). They took the view in respect of criterion 5.2 (d) that the same argument applies to criteria 5.2 (c) and (e). However, the evaluators consider that in the case

[32] "Entity" is understood to include both physical and legal persons by reference to Article 6 section 5 of the AML Law.

of these requirements marked with an asterisk specific provisions in law or regulation should clearly refer to the specific obligations on all financial institutions to conduct CDD of clients

- when carrying out occasional transactions that are wire transfers,
- when there is a suspicion of money laundering or terrorist financing,
- when the financial institution has doubts about the veracity or adequacy of previously obtained customer identification data.

Required CDD measures

387. Criterion 5.3 is marked with an asterisk too. Financial institutions are required to identify permanent or occasional customers (whether natural or legal persons or legal arrangements) and verify the customers' identity using reliable independent source documents, data or information.

388. Article 6 section 5 of the AML Law defines the customer identification requirements for monitoring entities, including financial institutions. Monitoring entities shall obtain and ascertain at least the following information:

a) in the case of a physical person:
his/her name, family name, date of birth, citizenship, place of residence, personal number by ID (or passport), number of ID (or passport); in the case of an individual entrepreneur also registering authority, registration date and number;

b) in the case of a legal entity:
name, subject of activity (business activity), legal address, registering agency, date and number of registration, identification code of tax payer, identification of the persons authorised to its management and representation.

389. In addition to the information acquired for the customer identification procedures, concerning physical persons, financial institutions have - according to FMS Decrees - to store customers' additional details such as place of birth, ID (Passport) issuing authority and date of issuance, main business activity and position held, contact details (i.e. telephone/fax/e-mail) and bank account details. As regards legal entities and organisational formations, financial institutions acquire the information on physical persons and legal entities owning 20% and more of the shares of the legal entities (information that is available in the public Entrepreneurial Register) and other banking information, i.e. date of appointing persons authorised for management and representation plus other Bank account/account details (for example, as regards banks see FMS Decree N. 95, Article 6 section 11 letter a and b). It was not clear to the evaluators how the identification of shareholders owning more than the 20 % is done for entities located abroad.

390. As regards banks, FMS Decree N.95 extends the information which is required for identifying customers: legal entities have to provide identification details of the person who represents them in banking operations (transactions) subject to monitoring. If a client is a branch or representation, the legal address of the head office is required. Concerning the information needed to open an account, the NBG has issued Decree N.51 in addition to the requirements of the AML law and FMS Decree N.95.

391. According to the FMS Decrees, if the client is an organisational formation, which has not the status of a legal entity (such as associations etc), the identification procedure is the same as required for legal entities.

392. Article 6 sections 6 and 7 of the AML Law lay out the types of documents that should be used in identifying the customer (the FMS Decrees contain comparable provisions). In the case of an individual, an ID-card or passport or another official document containing the relevant information, as described above, which has equal legal power according to Georgian legislation is required. The evaluators were advised that the different types of official documents which can be substituted for ID-cards or passports are limited and described in the "Law of Georgia on

Registration of Georgian Citizens and Foreigners Residing in Georgia and Issuance Procedures for Identification Certificates and Passports of Georgian Citizens" and "Decree N. 1398 of the Minister of Justice of Georgia on Approving Regulation on Certifying Identity of Georgian Citizens and Foreigners Residing in Georgia and Issuance of the Passport". The Georgian authorities informed the evaluators that documents used for identification other than a Georgian ID-card or Passport may only be used in cases when the physical person cannot have an ID-card or a Passport [in cases of opening deposits for a person under age; or if a bank operation is carried out by a military person (Article 6 section 8 of FMS Decree N. 95)].

393. The AML Law does not contain provisions for the identification of non-resident physical persons. This is covered by FMS Decrees (e.g. Decree N. 95 for commercial banks) which stipulate that foreign citizens have to be identified through passports issued by the corresponding authority of the relevant state.

394. For resident legal entities, Article 6 section 6 of the AML Law requires a resolution (or other relevant legal act) on registration of the legal entity issued by a court (or other authority as prescribed by legislation), and/or a record from an entrepreneurial (other relevant) register. The Georgian authorities informed the evaluators that the aforementioned documents need to be certified physical documents and that they are valid for 10 days.

395. According to Article 6 section 7 of the AML Law, a non-resident legal entity has to legalize the necessary documentation for its identification in compliance with the procedure established under the Georgian legislation. Details on this were not provided.

396. The NBG informed the evaluators that their supervisors have found deficiencies in the customer identification procedures performed by banks.

397. The evaluators were advised that in the context of CDD, clients of insurance companies are identified by insurance companies or their branches outside Tbilisi. As noted later in the report, though agents may occasionally introduce business, the CDD process is the responsibility of the insurance company alone. It appears that in some insurance companies outside Tbilisi branches are not always sufficiently equipped to copy all ID documents. This raises questions about the ability of some insurance companies to take effective CDD measures. Equally if copy documents are not retained, it is difficult to see how ongoing due diligence could be performed.

398. It is necessary to be clear what the verification process in respect of CDD measures implies in the Georgian system. The word "verification" does not appear either in the AML Law or in Decrees of the FMS or NBG. Nonetheless the examiners concluded that the concept is recognised in the law and in Georgian practice generally. Article 6 section 5 of the AML Law (and FMS Decrees) require(s) documents presented for identification to financial institutions "at least to allow" them to "ascertain" certain information from the documents provided for identification. Equally Article 13 of the NBG Decree N. 51 states: "*After ascertaining accuracy and completeness of the submitted documents, administrator (or person authorized by him) of the banking institution (its branch) shall authorize the client's application with signature, after which the respective account is opened for the client*". The examiners consider that these provisions cover a "first level" verification obligation, because the identification of clients is only possible with specific legally limited types of documents (see above). These types of documents are in accordance with the international standards as required by Footnote 5 of the Methodology (with reference to the General Guide to Account Opening and Customer Identification issued by the Basel Committee's Working Group on Cross Border Banking). However, these obligations are only detailed at one level and do not contain provisions for enhanced verification measures for cases/clients which present higher risks. Neither do the AML Law, nor FMS Decrees contain an obligation for financial institutions to use reliable, independent source documents, data or information other than what is set out in the law and decrees to verify the authenticity of the

provided information (e.g. if there are doubts concerning the validity of a passport by searching the database of stolen/invalid passports of the Ministry of Internal Affairs). The Georgian authorities considered, that the current provisions dealing with the verification of clients are satisfactory because financial institutions are not authorised to provide clients with services or establish a business relationship without preliminary identification (Article 6 section 2^1 of the AML Law) and should refuse to provide services to a client or to implement transactions if the customer cannot be identified (Article 5 section 7 of the AML Law). Consequently, if a financial institution has doubts about the adequacy of the provided documents, it would not be allowed to provide the client with services. The examiners consider that to enhance the effectiveness of the verification process further steps should be taken to provide for monitoring entities to conduct enhanced due diligence in higher risk cases by using other reliable independent documents.

399. Criterion 5.4 requires two specific issues to be covered in respect of the verification process with regard to legal persons.

400. The first is verification that any person purporting to act on behalf of the customer is so authorised, and the identification and verification of the identity of that person (criterion 5.4a of the Methodology). This is marked with an asterisk and needs to be in Law or Regulation. Article 6 section 5, of the AML Law stipulates that financial institutions are required to obtain information which allows them to ascertain that the persons are authorised to operate as representatives and agents for that legal person. According to Article 6 sections 1 and 2 of the AML Law and FMS Decrees (as regards banks, see FMS Decree N.95 Article 6 section 1), financial institutions must identify all business related entities, including their representatives and agents as well as third persons on whose behalf the transaction is concluded or the business relationship is established. The verification process of the provided information has to take place as described above under criterion 5.3.

401. Criterion 5.4b of the Methodology covers the second issue in relation to the verification process for legal persons. It is not marked with an asterisk but needs to be covered by other enforceable means. The verification of the legal status of the legal person or arrangement requires e.g. proof of incorporation or similar evidence of establishment and information on the customer's name, trustees (for trusts), legal form, address, directors and provisions regulating the power to bind the legal person or arrangement. The verification of the legal status of a legal entity in Georgia is based on the documents provided according to Article 6 sections 6 and 7 of the AML Law, which covers all monitoring entities (see above under criterion 5.3 - a resolution on registration issued by a court and/or a record from the entrepreneurial register). Furthermore, the FMS Decrees require for the identification process *inter alia* the following information: details of registration (registering authority, date and number of registration) and tax identification numbers, identification details of the person authorised for management and representation (as regards banks see FMS Decree N. 95, Article 6 section 6 letter b). The FMS Decree is sanctionable under the Regulation on Determining and Imposing Pecuniary Penalties on Commercial Banks (approved under Decree N. 304 of the President of the NBG; changes introduced under Decree N. 267 of 2 December 2004 of the President of the NBG). As also regards banks, NBG Decree N.51 "Instruction on Opening Accounts in Georgia Banking Institutions" (Annex 16) describes the additional documents that are required for opening an account: Registered charter (approved by the superior body or notarized copy), duly certified decision on the establishment/reorganisation/liquidation of the entity and certificate from tax authority on registration. Legal entities are required to fulfil the application form for opening an account signed by a senior administrator of the legal entity and to submit samples of signatures and seals certified by the administrators signature and seal. The evaluators consider that this criterion is covered by enforceable means.

402. Criteria 5.5.1 and 5.5.2 (b) are also asterisked. Regarding the identification of the beneficial owner, it has to be noted, that neither in the AML Law nor in FMS Decrees or in any other

Georgian normative act, a definition of "beneficial owner" within the meaning of the FATF Recommendations can be found. Consequently, there are no legal requirements to take reasonable measures to determine the natural persons who ultimately own or control the customer or the person on whose behalf transactions or services are provided by financial institutions. Recapitulating, financial institutions are not obliged to determine/fully understand the ownership of customers and the person on whose behalf transactions or services are carried out.

403. Article 6 of the AML Law and the relevant FMS Decrees oblige financial institutions to identify the customer as well as the other person on whose behalf the customer is acting. However, there is no specific provision neither in the AML Law nor FMS Decrees or other regulation which requires financial institutions actively to determine whether the customer is acting on behalf of the third person (if he does not declare this) or on how to determine the identity of third parties involved in the transactions.

404. The FMS Decrees N. 95, 100 and 101 [see e.g. Article 6 section 11 (b) and (a) of the Decree 95] stipulate that identification details on physical persons and legal entities owning 20 % and more of the stock, share etc. shall be documented, if this information is set out in the provided identification documents. The Georgian authorities informed the evaluators that the domestic identification documents contain information on all shareholders but no legal provision could be brought to the attention of the evaluators which obliges financial institutions to take reasonable measures to determine who is the natural person that ultimately owns or controls a customer which is a legal entity (especially with regard to more complex structures where the shareholders of a customer being a legal entity are also legal entities).

405. The examiners strongly advise to add to the AML Law a definition of "beneficial owner", possibly taken from the glossary of the FATF Recommendations. The Glossary defines the notion of "beneficial owner" as "the natural person(s) who ultimately owns or controls a customer and/or the person on whose behalf a transaction is being conducted and also incorporates those persons who exercise ultimate effective control over a legal person or arrangement".

406. Criterion 5.6 covers the requirement to obtain information on the purpose and intended nature of the business relationship (the business profile). This should be required by other enforceable means and be sanctionable. The Georgian authorities indicated that this is covered for legal entities, which have to provide a register charter before establishing a business relationship (Article 9 section 1 let. d NBG Decree 51; Article 6 section 5 of the AML Law). Furthermore the Georgian authorities took the view that this issue is covered by Articles 1, 4 and 19 para 4 of the Law of Georgia on Activities of Commercial Banks. As these provisions contain only the different possible types of bank accounts and general principles regarding agreements between the customer and the bank, the evaluators were not convinced that criterion 5.6 was fulfilled, because no clear provision (either in the AML Law or other regulation) which requires financial institutions to inquire of all clients (both legal and physical persons) on the purpose and nature of their business relationship could be found. However, the evaluators were informed that, according to the banking procedures, at opening of current accounts, banks do ask for this additional information. These procedures are not based on laws or regulations but on internal regulations, and are therefore not sanctionable.

407. The FMS Decrees should require financial institutions to obtain information on purpose and nature of the business relationship in order to understand the type of business operations, and the obligation should be sanctionable.

408. According to Criterion 5.7 of the Methodology (again asterisked), financial institutions should be required to conduct ongoing due diligence (which should include e.g. scrutiny of transactions to ensure that they are consistent with knowledge of the customer and the customer's business and risk profile) on the business relationship. Neither the AML Law nor FMS Decrees require

financial institutions to conduct ongoing due diligence on their clients such as (a) keeping up-date information collected under the identification requirements, or (b) scrutiny of transactions undertaken by the clients and measures, as described in the FATF Recommendations.

409. However, the NBG has issued an inspection manual which includes *inter alia* a concept for ongoing due diligence. The NBG sent this inspection manual and the Basel Paper with a letter to the commercial banks. This inspection manual is considered as a guideline to the banking sector. The NBG examiners carry out on-site inspections on the basis of this document and have made some recommendations in this regard. On the basis of Article 30 para 2 (a) of the Law of Georgia on Activities of Commercial Banks, the NBG are said to have sanctioned violations in respect of this inspection manual. However, as criterion 5.7 is an asterisked one, it needs to be set out in primary or secondary legislation, which is currently not the case. As the Law of Georgia on Activities of Commercial Banks provides only a general possibility for sanctioning and does not specifically deal with the concept of ongoing due diligence, the requirements of criterion 5.7 are not fulfilled.

410. As regards banks, evaluators were informed that information on clients is updated on the basis of NBG Decree N.51 "Instruction on Opening Accounts in Georgian Banking Institutions" (Annex 16) and on the basis of internal regulations.

Risk

411. Criterion 5.8 requires financial institutions to perform enhanced due diligence for higher risk categories of customer, business relationship or transaction. As noted earlier, the Georgian AML/CFT framework does not provide for different categories of clients and is silent on the issue of risk. Hence, financial institutions conduct the same customer identification procedures for all their clients and it seems that financial institutions are unaware of the concept of the higher risk customer.

412. The AML Law and FMS Decrees do not provide for categories of transactions or products that require enhanced due diligence. Neither simplified nor reduced CDD measures are stipulated in the AML legislation and regulation. Financial institutions have to identify all the clients on the basis of the provisions of AML Law and according to the implementing measures described in the FMS Decrees. The examiners formed the view that in practice not all financial institutions are familiar with a risk sensitive approach. Some representatives of the banking industry informed the evaluators that some innovative banks in Georgia are implementing CDD procedures – despite customer identification requirements prescribed by Law – on the basis of the risk-based approach according to international standards (such as the Basel Paper on KYC policies and procedures and FATF Recommendations).

Timing of verification

413. According to Article 6 of the AML Law, financial institutions are not authorised to provide the clients with services and business relationships without preliminary identification.

414. The AML Law and FMS Decree require banks not only to identify the clients but also to verify their identity before providing services or before establishing a business relationship as required by section 3 of the mentioned Article 6 of the AML Law.

415. On the basis of the AML Law, financial institutions have to complete the verification of the identity of the customer before the establishment of a business relationship or before the execution of a transaction.

416. As regards banks, the evaluators were informed that the customer identification process (identification of the clients and verification of their identity under the law) might require up to two working days for the banks to receive all the documents required to open accounts.

417. The evaluators advise the Georgian authorities to consider permitting financial institutions to complete the verification of the identity of the client and of the beneficial owner (once the definition of the latter has been satisfactorily introduced into the legislation), following the establishment of the business relationship, provided that: this occurs as soon as reasonably practicable; that it is essential not to interrupt the normal conduct of business of the financial institutions, and the money laundering risks are effectively managed.

Failure to satisfactorily complete CDD

418. According to Article 6 para 2^1 of the AML Law, financial institutions are not authorised to provide clients with services or to establish a business relationship without preliminary identification. Moreover, Article 5 section 7 of the AML Law states that financial institutions shall refuse to provide services to a client or to implement transactions if this customer cannot be identified.

419. In the examiners' view, there is no clear provision – neither in the AML Law nor in the Decrees – for financial institutions to consider making an STR to the FMS in a case where they cannot satisfactorily complete the CDD process before opening an account or commencing business relations. The Georgian authorities pointed out that customer identification requirements apply to every (new, future or additional) transaction or service because of the broad interpretation of the word "transaction" in the AML Law; with reference to Article 50 of the Civil Code (Annex 7), it was said in this context that "deal" would be a better translation than "transaction". Nonetheless, the examiners consider that criterion 5.15 (where the financial institutions cannot satisfactorily CDD before opening the account etc.) should be clearly required by other enforceable means for all financial institutions.

420. The AML Law requires financial institutions to identify customers prior to implementing services/transactions or opening a business relationship but there are no explicit provisions required by enforceable means to terminate the business relationship and to consider making an STR when a financial institution subsequently has doubts about the veracity or adequacy of previously obtained customer identification data under the AML Law or where they have applied CDD requirements to existing customers in respect of whom customer identification had not been taken before the enactment of the AML Law. In the examiners view there needs to be a requirement covered by enforceable means in respect of criterion 5.16 to cover these two situations. However, the Georgian authorities again took the view that financial institutions are obliged to make an STR in these circumstances because of the broad interpretation of the word "transaction" (see paragraph above).

421. The Georgian authorities also referred the evaluators in the context of criteria 5.15 and 5.16 to the terms of Article 9 section 1 of the AML Law, which requires monitoring entities to send written notifications to FMS where it has a supposition that the transaction is covered by Article 5, which includes suspicious transactions [together with the definition in Article 2 (h) of the AML Law]. In practice, it is necessary to interpret at least two provisions in the AML Law to reach the conclusion that the requirements of these criteria are met. In the absence of specific guidance on this point to assist monitoring entities, the evaluators could not identify a clear and common practice on which sanctions could be taken for non-fulfilment.

Existing customers

422. Financial institutions should be required to apply CDD requirements also to existing customers on the basis of materiality and risk and to conduct due diligence on such existing relationships at appropriate times. Some examples are given in the box in the Methodology of the times when this might be appropriate – e.g. when a transaction of significance takes place, when the customer documentation standards change substantially etc. Even if there were, before the AML Law came into force, some regulations covering identification of customers (e.g. Decree N. 51 of the NBG of 17 March 2004 on Approval of Instruction on Opening Accounts in Georgian Banking Institutions – Annex 16), it has to be noted, that the current legislation does not extend customer identification requirements to all the existing clients of the financial institutions, and there was no general re-identification. Nonetheless, the NBG indicated that in their inspections so far they had not discovered cases where accounts of existing customers were opened without identification before the AML Law was introduced.

423. In the examiners view it could be argued that Article 6 section 2^1 of the AML Law deals indirectly with this issue in relation to customers who have not used accounts for many years and come to the bank to conduct a transaction as the provision states that "monitoring entities shall not be authorised to provide the client with service [...] without preliminary identification".

424. The evaluators nonetheless recommend that the application of CDD requirements to all existing customers should be clearly covered on the basis of materiality and risk in enforceable guidance for all financial institutions.

European Union Directive

Article 7

425. According to Article 7 of the Second European Union AML Directive, member States shall ensure that financial institutions refrain from carrying out transactions which they know or suspect to be related to money laundering until they have apprised the competent authorities. In addition, these authorities may, under conditions determined by their national legislation, give instructions not to execute the operation which has been brought to their attention by an obliged person who has reason to suspect that such operation could be related to money laundering. According to the AML Law (Article 5 section 6) and FMS Decrees, monitoring entities shall not suspend the implementation of a transaction except for the following reasons: (1) the client cannot be identified; (2) any party involved in the transaction is on the list of terrorists or persons supporting terrorism; (3) other cases provided by Georgian legislation (there are none at present). According to Article 10 section 4 (f) of the AML Law, the FMS is able to apply to the court for the purpose of suspending a transaction if there is the grounded supposition that the property (transaction amount) may be used for financing of terrorism. But no such provision exists regarding transactions suspected to be related to money laundering. To comply with Article 7 of the Second EU AML Directive the Georgian Authorities should ensure in the AML Law and/or Regulations that monitoring entities shall refrain from carrying out a transaction suspected to be related to money laundering until they have apprised the FMS (unless of course this could frustrate efforts to pursue the beneficiaries of the suspected money laundering operation). Moreover the FMS, in the examiners' view, should have the power to stop the execution of a suspicious transaction related to money laundering.

Article 3(8)

426. According to Article 3 para 8 of the European Union Directive, institutions and persons subject to this Directive shall carry out identification of customers, even where the amount of the transaction is lower than the threshold laid down, wherever there is a suspicion of money laundering. This criterion is met, as the AML law does not require customer identification only in

the case of a suspicion of money laundering. The monitoring entities have always to identify the clients regardless of a suspicion of money laundering.

Recommendation 6

427. Neither the Georgian AML legislation nor other enforceable provision contains specific and/or enhanced CDD measures in relation to politically exposed persons (PEPs), whether foreign or domestic. So far, financial institutions are neither, by the AML Law nor by FMS Decrees, required to put in place appropriate risk management systems to determine if a potential customer, a customer or the beneficial owner is a PEP. Neither are there requirements to develop procedures to obtain authorisation for establishing business relationships with a PEP from senior management, or for continuing such a relationship with a customer or beneficial owner who is subsequently found to be or becomes a PEP. As they are not identified, there is no requirement to conduct enhanced ongoing monitoring on business relationships with PEPs. It follows that financial institutions are also not required to take reasonable measures to establish the source of funds of customers.

Additional elements

428. The 2003 United Nations Convention against Corruption has not yet been signed by Georgia, but the Georgian authorities advised the evaluators that the appropriate domestic procedures have commenced.

Recommendation 7

429. Criteria 7.1 to 7.4 of the Methodology cover cross-border banking and other similar relationships (gather sufficient information about a respondent institution, assess the adequacy of the respondent institution's AML/CFT controls, obtain approval from senior management before entering new correspondent relations, document the respective responsibilities of each institution).

430. The AML Law does not include specific AML/CFT provisions on establishing cross-border correspondent banking accounts or similar relationships. Also the FMS Decree N. 95 (Annex 17) contains no AML measures to be undertaken by financial institutions for operating with foreign counterparts.

431. As regard banking procedures, the NBG Decree N. 51 "Instruction on Opening Accounts in Georgian Banking Institutions", Article 10 section 1, subsections a) to d) describe the measures that Georgian banks have to apply when opening a correspondent account with a domestic bank. The Georgian authorities advised that this provision is also applicable for cross border corresponding banking accounts. The requirements are limited to the signature of a senior administrator and chief accountant of the banking institution on the application form and the submission of official documentation, but there are no provisions, either in the AML Law, in the FMS Decree N. 95 or in any other regulation which would require a bank or other financial institution to gather information about the respondent institution and assess the AML/CFT measures and the internal controls of the respondent institution and to document the AML/CFT responsibilities of each institution. There are no provisions requiring any guarantees that a respondent institution applies all the normal CDD obligations on customers that have direct access to the accounts of the correspondent institution and that it is able to provide relevant customer identification data on request to the counterpart institution. Although there are no provisions in place with respect to a Georgian bank opening a correspondent account with a foreign bank, the evaluators were informed that according to the internal policies and procedures of banks the decision for opening a correspondent banking relationship with a foreign counterpart is in the exclusive competence of the senior management, but such requirements cannot be enforced by the supervisors.

Recommendation 8

432. Criteria 8.1 to 8.2.1 of the Methodology cover: policies to prevent the misuse of technological developments; policies regarding non-face to face customers including specific and effective CDD procedures to manage the specific risks associated with non-face to face business relationships or transactions.

433. Modern banking and financial technologies are not widespread in the Georgian financial services industry. Financial institutions confirmed that non-face to face business operations are quite rare on Georgian territory. Furthermore, the evaluators were informed that according to Article 6 section 2 AML Law only after opening an account with a face to face identification procedure, can distant services (such as use of ATM) be performed by customers. The Georgian authorities advised that one bank was liquidated because *inter alia* accounts were opened on the basis of documents sent by mail.

434. Georgian AML Legislation and Regulations do not include enforceable requirements on non-face to face business relationships or transactions; consequently, financial institutions have not implemented policies and/or procedures to prevent the misuse of technological development for ML/FT purposes.

3.2.2 Recommendations and comments

435. Though trust and portfolio manager companies and collective investment managers do not exist in Georgia, the Georgian authorities should consider adding them to the list of monitoring entities in the AML Law, as there are no regulations explicitly prohibiting these kind of activities.

436. The examiners consider that there should be a provision explicitly prohibiting the opening of anonymous accounts or accounts in fictitious names in respect of all financial institutions which are able to keep accounts for physical and legal persons.

437. At present, the Georgian AML legislation contains a customer identification obligation but the CDD requirements as set out in the FATF Recommendations are not yet fully implemented. In particular, CDD measures should be explicitly applied, not only when establishing business relations, but also:

- when financial institutions carry out (domestic or international) transactions which appear to be linked and are above the threshold of US$/Euro 15,000;
- when carrying out occasional transactions that are wire transfers;
- when there is the suspicion of ML and FT regardless of any exemptions or thresholds or,
- when the financial institution has doubts about the veracity or adequacy of previously obtained customer identification data.

438. The concept of verification of identification should be further addressed. The Georgian authorities should take steps to apply an enhanced verification process in appropriate cases. They should consider requiring financial institutions to use in higher risk cases for the verification of the customer's identity not only the documents as currently prescribed by law but also to use *other* reliable, independent source documents, data or information.

439. Georgian Legislation should provide a definition of "beneficial owner", on the basis of the glossary to the FATF Methodology. Financial institutions should take reasonable measures to verify the identity of beneficial owners using relevant information or data obtained from reliable sources.

440. Moreover, for all clients, financial institutions should determine whether the customer is acting on behalf of a third party and, if this is the case, identity the beneficial owner and verify the latter's identity. As regards clients which are legal persons, financial institutions should understand the controlling structure of the customer and determine who the beneficial owner is.

441. Financial institutions should obtain information on the purpose and intended nature of the business relationship.

442. The scrutiny of transactions and the updating of identification data acquired during the CDD process should be undertaken as an ongoing process of due diligence on the business relationship and this requirement should be set out by the AML Law, in order to ensure that the transactions being conducted are consistent with the financial institutions' knowledge of the client.

443. The Georgian authorities should introduce a "risk based" approach in the AML/CFT legislation, that would require financial institutions to perform enhanced due diligence for higher risk categories of customer, transactions and products as described by the FATF Recommendations. It would follow from this that financial institutions could then determine an internal procedure on approval from senior management for categories of clients, products, services and transactions considered as higher risk of money laundering and of terrorism financing. Where the risks are lower, Georgian authorities may decide to permit financial institutions to apply simplified or reduced CDD measures.

444. The Georgian authorities may wish to consider permitting financial institutions to complete the verification of the identity of the customer and the beneficial owner following the establishment of the business relation provided that:

1) this occurs as soon as reasonably practicable;
2) this is essential not to interrupt the normal conduct of business
3) financial institutions are able to manage ML/FT risks.

445. Where a financial institution is unable to satisfactorily complete CDD measures, it should consider making an STR to the FMS.

446. Financial institutions should be required by enforceable means to identify all existing clients (on the basis of materiality and risk) and to conduct due diligence on such existing relationships at appropriate times, in order to acquire all missing data and information.

447. There are no requirements in Georgian Law or Regulation with regard to PEPs. The Georgian authorities should put in place measures by enforceable means that require financial institutions:

- to determine if the client or the potential client is - according to the FATF definition – a PEP;
- to obtain senior management approval for establishing a business relation with a PEP;
- to conduct higher CDD and enhanced ongoing due diligence on the source of the funds deposited/invested or transferred through the financial institutions by the PEP.

448. Georgia has not implemented Recommendation 7 through enforceable means. In relation to cross-border correspondent banking and services, financial institutions should not only conduct CDD as required under Recommendation 5, but also obtain further information on:

- the reputation of the respondent counterparts from publicly available information;
- AML/CFT controls, assessing and ascertaining their adequacy;
- document the respective AML/CFT responsibilities of each institution;
- obtain guarantees that counterpart organisations apply the normal CDD measures to all customers that have client access to the accounts of the correspondent institutions and that it is able to provide relevant customer identification data on request.

449. Georgia has not implemented Recommendation 8 through enforceable means. Financial institutions need to be required to have policies in place to prevent the misuse of technological developments for AML/CFT purposes, and to have policies in place to address specific risks associated with non-face to face transactions. It is understood, for example, at present that the Internet is not used for moving money from one account to another, but this and other face to face transactions may develop soon and policies need to be in place to guard against money laundering and financing of terrorism risks.

3.2.3 Compliance with Recommendations 5 to 8

	Rating	Summary of factors underlying rating
R.5	**Partially compliant**	There should be a specific provision clearly prohibiting the opening of anonymous accounts or accounts in fictitious names in respect of all financial institutions which are able to keep accounts for physical and legal persons. The AML Law has implemented some customer identification obligations but full CDD requirements and on-going due diligence are not implemented in the law. There is no explicit legal requirement on the financial institutions to implement CDD measures when: - financial institutions carry out (domestic or international) transactions which appear to be linked and are above the threshold of US$/Euro 15,000, - carrying out occasional transactions that are wire transfers, - there is a suspicion of ML and FT; - financial institutions have doubts about the veracity or adequacy of previously obtained customer identification data. Financial institutions are required to identify the person on whose behalf the client is acting, but neither the AML Law nor FMS Decrees contain a definition of "beneficial owner" and also the requirement to identity and to verify his/her/its identity is missing. There is no obligation on financial institutions to obtain information on the purpose and nature of the business relationship or to conduct on-going due diligence. The Georgian authorities should introduce a "risk based approach", performing enhanced and simplified CDD measures for different categories of customers, business relationships, transactions and products. For higher risk customers the monitoring entities should conduct enhanced due diligence and as necessary use reliable independent documents other than those set out in the AML Law. There is an inadequate obligation for financial institutions to keep documents, data and information up to date. There is no clear obligation on the financial institutions to consider making an STR to the FMS in case of failure to satisfactorily complete CDD requirements before account opening or commencing business relations or where the business relationship has commenced and doubts about the veracity or adequacy of previously obtained data arise. As regards existing clients, there is no obligation to apply CDD requirements to existing customers on the basis of materiality and risk and to conduct due diligence on such existing relationships at appropriate times.
R.6	**Non compliant**	The Georgian AML/CFT system does not contain any enforceable measures concerning the establishment of business relationships with politically exposed persons (PEPs).
R.7	**Non compliant**	Georgia has not implemented any enforceable AML/CFT measures concerning establishment of cross-border correspondent banking relationships.
R.8	**Non compliant**	Currently, modern financial technology is not widespread in the Georgian financial industry. The AML Law does not contain enforceable measures requiring financial institutions to have in place or take measures to prevent the misuse of technological developments in AML/CFT schemes and to address the specific risks associated with non-face to face business relationships or transactions.

3.3 Third Parties and introduced business (Recommendation 9)

3.3.1 Description and analysis

450. Under the AML Law, financial institutions are obliged to carry out customer identification procedures and CDD so far as it goes for any client (see above).

451. Georgian Legislation does not *permit* financial institutions to rely on third parties to perform the customer identification process on behalf of Georgian intermediaries but there is no legally binding provision to *prohibit* it. The Georgian authorities pointed out, that the requirements set out in Article 6 of the AML Law clearly address financial institutions. In their view they could not outsource these requirements, because they are addressed to monitoring entities and it would be a violation of this provision. In any event, in practice they advised that such situations do not occur.

452. The examiners understood that there is no general practice of using agents in Georgia. The Georgian authorities informed the evaluators that insurance companies use persons for establishing the first contact with clients. The Georgian authorities considered that only one or two persons might operate on behalf of an insurance company on this basis and under a contract. In any event, the evaluators were assured that the function of such persons is not more than establishing the first contact with a (potential) client and that the insurance activities *per se* (like filling out the application and the agreement) as well as the identification process are carried out only by the insurance company.

453. The Georgian authorities informed the evaluators that other financial institutions have no similar arrangements for introduction of business.

3.3.2 Recommendation and comments

454. Currently it is not permitted to rely on a third party to perform customer identification and in practice this situation does not occur. However, as financial institutions could in future consider relying on intermediaries or other third parties to perform some of the elements of the CDD process or to introduce business, the Georgian authorities should cover all the essential criteria under Recommendation 9 in the AML Law.

3.3.3 Compliance with Recommendation 9

	Rating	Summary of factors underlying rating
R.9	**N/A**	Recommendation 9 is not applicable to the Georgian AML/CFT system.

3.4 Financial institution secrecy or confidentiality (R.4)

3.4.1 Description and analysis

455. Criterion 4.1 states that countries should ensure that no financial secrecy law will inhibit the implementation of the FATF Recommendations. Areas where this may be of particular concern are the ability of competent authorities to access information they require to properly perform their functions in combating money laundering or financing of terrorism; the sharing of information between competent authorities, either domestically or internationally; and the sharing of information between financial institutions where this is required by Recommendations 7 and 9 or SR.VII. Recommendation 9 has been rated as non-applicable to Georgia.

456. The "Law of Georgia on Activities of Commercial Banks" (Annex 17) stipulates in its Article 17 ("*Banking Confidentiality*") that "*no person shall be permitted to reveal a bank's confidential information about any person or to disclose, disseminate or use information for personal gain*" and that "*information on operation, balances and accounts of any physical or legal persons may be disclosed to account holders and their representatives as well as to the Financial Monitoring Service of Georgia in cases considered under the legislation. Such information may be disclosed to other persons pursuant to the court's decision*".

457. Pursuant to this Article, confidentiality of banking information is protected while the FMS is permitted to obtain banking information pursuant to the AML Law.

458. As regards confidentiality of the banking information, the evaluators were informed that if a foreign bank should request information from a Georgian bank on its clients, a decision of the court is required.

459. For other financial institutions, the Law on Credit Unions (Annex 15) stipulates that the information on their members may be disclosed pursuant to a court's decision. The Law on Securities Market (Annex 19) and the Law on Insurance Companies (Annex 28) also contain provisions on confidentiality, which are not identical to the provisions in the Law of Georgia on Activities of Commercial Banks.

460. According to Article 10 section 4 of the AML Law, the FMS is authorised – for the purpose of revealing the facts of illicit income legalisation or terrorism financing - to request and obtain from the monitoring entities (financial institutions included) information and documents (in original and copy) available to them, including confidential information, on any transaction and parties related to it. Moreover, under the same article, the FMS is authorised to forward questions and obtain information from all state or local self-government ad government bodies and agencies, as well as forwarding questions and obtaining information from any individual or legal entity, which exercises public legal authority granted by the Georgian legislation. As noted earlier, "other persons" is interpreted to include law enforcement under a court order.

461. Article 11 of the AML Law states that the supervisory bodies shall co-operate with each other and the FMS in sharing information and experience.

462. In this regard, for the banking sector a "Special Coordination Group" has been established between the FMS and the NBG to address issues related to the AML/CFT sphere.

463. According to Article 11 section 3 of the AML Law, the supervisory bodies have to inform the FMS immediately, if they reveal in supervision that a transaction which is subject to monitoring has not been forwarded to the FMS. In these cases, the supervisory bodies are obliged to apply the appropriate sanction against the infringer.

464. Concerning international cooperation, the FMS has the right to conclude independent agreements with foreign authorities regulating the exchange of information on ML/FT issues.

465. There is no clear power for financial institutions to share information where this is required by Recommendation 7 and SR.VII.

3.4.2 Recommendations and comments

466. In order to reveal ML/FT, the FMS has under the AML Law access to the information held by financial institutions as well as all other monitoring entities and by state bodies and agencies. The AML Law does not explicitly state that the provisions of that Law prevail over sectoral laws. The same provision on the "confidentiality" in the Law of Georgia on Activities of Commercial Banks (which specifically allows access to confidential information by the FMS) does not appear in the Credit Union Law and in the laws for insurance companies and the securities market. While no problem so far has occurred in practice in respect of the FMS obtaining information from non-commercial bank sources, the AML Law and the laws governing all the financial institutions should contain consistent provisions ensuring that the FMS request for information cannot be challenged on the grounds of confidentiality or secrecy.

467. It is recommended that a provision is made for the sharing of information between financial institutions in relation to correspondent banking and in relation to identification of customers involved in cross-border or international wire transfers.

3.4.3 Compliance with Recommendation 4

	Rating	Summary of factors underlying rating
R.4	**Largely compliant**	There should be consistent provisions in legislation ensuring that requests for information by the FMS cannot be challenged because of confidentiality / secrecy. Financial institutions are not specifically authorised to share information for the implementation of Recommendation 7 and SR.VII.

3.5 Record keeping and wire transfer rules (R.10 and SR. VII)

3.5.1 Description and analysis

Recommendation 10

468. Recommendation 10 has numerous criteria under the Methodology which are asterisked, and thus need to be required by law or regulation. Financial institutions should be required by law or regulation:

- to maintain all necessary records on transactions, both domestic and international, for at least five years following the completion of the transaction (or longer if properly required to do so) regardless of whether the business relationship is ongoing or has been terminated;
- to maintain all records of the identification data, account files and business correspondence for at least five years following the termination of the account or business relationship (or longer if necessary) and the customer and transaction records and information;
- to ensure that all customer and transaction records and information are available on a timely basis to domestic competent authorities upon appropriate authority.

469. Transaction records are also required under Criteria 10.1.1 (which is not asterisked) to be sufficient to permit reconstruction of individual transactions so as to provide, if necessary, evidence for prosecution. This needs to be required by other enforceable means (and be sanctionable).

470. Under Article 7 of the AML Law, financial institutions (as well as all other monitoring entities) are obliged to keep information and documents used for the customer identification for a period of no less than 5 years from the moment of the termination of the business relationship with the client.

471. Information and data on transactions "subject to monitoring" are kept for no less than 5 years from the day the transaction has been implemented or concluded. There is no requirement in the law for this information to be kept longer than 5 years, if requested to do so by a properly authorised competent authority.

472. Article 7 (sections 2 and 3) states that the information (documents) on transactions and on customers shall be kept in their original form or in copy confirmed by a notary or by a "recipient person" authorised for that purpose by the financial institutions.

473. The information and documents shall be recorded and stored in a way that all data fully reflect the transactions and, when needed, especially for criminal prosecutions, this information is capable of being used as evidence.

474. According to Article 6, section 4 and Article 7 of the AML Law, financial institutions which are monitoring entities are obliged to register and record the following information (documents) on transactions "subject to monitoring":

a) Type, form, subject, basis and objective of a transaction;
b) Date and place of conclusion of a transaction, as well as the amount of money needed for the transaction and the currency thereof;
c) Information (documents), presented for the identification of an entity (legal or natural persons) involved in the transaction;
d) Information (documents) necessary for the identification of the person at whose order the transaction is concluded or undertaken;
e) Information (documents) necessary for the identification of the person by whom the transaction is being concluded or undertaken.

475. Furthermore, financial institutions are also obliged under Article 8 section 3 of the AML Law to systemize the information on transactions "subject to monitoring" (i.e. to develop a data registration system and ensure its operation).

476. FMS Decree N.95 (Annex 17) requires banks to document and systemize customer information data by setting up an electronic data base (Article 6 section 9 and Article 8 section 1). The information (documents) retained in the banks shall fully reflect the implemented bank operation and/or transaction and involved persons. In addition, the information (document) shall be systemized, recorded and maintained in a way, that when needed (to be used as an evidence in

criminal, civil or arbitration proceedings) it can be found and retrieved quickly (Article 8 section 4). According to Article 7 section 5 of this Decree, banks are obliged to record information indicated in sections 3 and 4 of this Article relating exclusively to those bank operations (transactions), which are subject to monitoring according to Article 5 of the AML Law and Article 3 of this Decree.

477. There is no general legal requirement on all financial institutions to ensure record keeping in respect of all domestic and international transactions regardless of the threshold (and the particular typologies of transaction above the threshold that are set out in Article 5 (2) AML for the banks), which would permit a reconstruction of all individual transactions. In other words, record keeping only applies under the AML Law to a transaction or series of transactions exceeding 30,000 GEL in cash or non-cash, or suspicious transactions for all financial institutions, and, for commercial banks, in respect of transactions above 30,000 GEL in the circumstances set out in Article 5 (2) AML Law, and in respect of suspicious transactions regardless of the threshold.

478. However, according to Article 23 of the Law of Georgia on Activities of Commercial Banks in conjunction with NBG Decree N. 85 of 27 March 2006, banks are obliged to keep on file for a period of ten years all pertinent documentation supporting each of its transactions for clients.

479. The Georgian authorities informed the evaluators that the FMS and other competent authorities are able to obtain any information and data on clients and on transactions carried out by the financial institutions. They pointed to Article 41 of the Tax Code (Annex 20) as providing a general requirement on all "tax payers", including all financial institutions, to keep "those documents on the basis of which registration of entities subject to taxes and completion of tax declarations are carried out", as well as "documents proving received income and profit, expenses and paid or/and withheld taxes for the period of six years".

480. However it seems to the evaluators that other than for banks, there is no clear specific legal requirement on the financial institutions to ensure that information on customers and on all transactions, regardless of whether these transactions are "subject to monitoring", shall be kept available on "a timely basis" to the competent authority.

SR.VII

481. The Methodology requires, for all wire transfers, that financial institutions obtain and maintain the following full originator information (name of the originator; originator's account number; or unique reference number if no account number exists) and the originator's address (though countries may permit financial institutions to substitute the address with a national identity number, customer identification number, or date and place of birth) and to verify that such information is meaningful and accurate. Full originator information should accompany cross-border wire transfers, though it is permissible for only the account number to accompany the message in domestic wire transfers.

482. Banks and the Georgian Postal Organisation are the unique entities that provide wire transfers.

483. The Georgian Postal Organisation carries out both domestic and international wire transfers. The Georgian Postal Organisation has in Georgia 1080 offices. In 2005 the total amount of remittance transactions via Georgian Postal Organisation offices was about 38,000 USD. The maximum amount which can be transferred is 3,000 USD.

484. Domestic wire transfers are conducted through banking channels. Banks also perform cross-border and domestic wire transfers using service-remitters (e.g. Western Union). The evaluators were informed that money remittance services are provided by bank employees

that carry out customer identification and record keeping procedures as set out in the AML Law and FMS Decree N. 95. For cross-border wire transfers, Georgian banks can also operate via the SWIFT-system. Concerning outgoing transfers, the examiners were advised that SWIFT determines itself the items to fill in, in order to transfer money (number of accounts and full name and address of the originator).

485. Article 6 section 3 of the AML Law requires banks to identity the clients before executing money transfers; the Georgian Post has to comply with the general identification requirements contained in Article 6 section 1 of the AML Law. FMS Decrees N. 95 for commercial banks and N.102 for Postal Organizations do not contain specific provisions dealing with international and domestic wire transfers.

486. As regards banks, NBG Decree N. 220 "On approving rules for carrying out non cash settlements in Georgia" regulates transfer procedures conducted through banking channels and sets out report forms – payment orders - where the bank's client, beneficiary information and banking details are enclosed. Furthermore, it requires commercial banks to gather transfer information including *inter alia* name of the payer, the payer's identification number and payer's account (Article 2 section 1 of the NBG Decree N.220). The evaluators were informed that wire transfers can only be executed once the bank has received the payments orders. According to Article 3 section 12 of the NBG Decree N. 220, four copies have to be submitted to the banks of which the first is used as "memorial order", the second is sent to the beneficiary's bank with account records and the third as a payment confirmation is to be returned to the communications organisation and the fourth copy of the order is sent to the beneficiary's bank along with the remittance receipt. It was not clear what the term "communication organisation" covers in this context, though the examiners surmised it could be a financial messaging network. The Georgian authorities informed the evaluators that the payment orders are used both for domestic and international wire transfers, but, as regards the latter, copies are not sent to the beneficiary's bank.

487. NBG Decree N.220 is applicable only for banks and the bank's compliance with it is supervised by the NBG; for the Georgian Post no comparable provisions are in place.

488. There are no procedures in place for banks and the Georgian Post dealing with "batch transfers" and there are no provisions requiring financial institutions to ensure that non-routine transactions are not batched. Financial institutions are not required to adopt risk-based procedures for handling wire transfers that are not accompanied by complete originator information. There are no provisions requiring intermediary financial institutions to maintain all the required originator information with the accompanying wire transfers.

489. NBG Decree N.304 "on determining and imposing pecuniary sanctions on commercial banks" does not provide for any sanction related to wire transfers, however Article 30 of the "Law on Activities of Commercial Banks" is applicable in that it provides for sanctions and actions in cases where the NBG Decree N.220 has been violated.

3.5.2 Recommendation and comments

490. The AML Law requires financial institutions to keep information on transactions "subject to monitoring" for at least 5 years following the transaction that has been concluded. However, Recommendation 10 requires financial institutions to maintain all necessary records on transactions (both domestic and international) for at least 5 years. Thus the provisions of the AML Law do not cover the entire transactions carried out by financial institutions, but exclusively those "subject to monitoring". For banks, the transactions "subject to monitoring" are those as

described in the AML Law, though it was accepted that other requirements under the Law of Georgia on Activities of Commercial Banks require the maintenance of all transaction records in banks for the appropriate periods.

491. The AML Law should require all financial institutions to record all domestic and international transactions.

492. As regards the record maintenance of the identification data of the client, the AML Law requires financial institutions to keep this information for at least 5 years after the termination of the business relationship, which is in line with Recommendation 10. Provision should be made for this data to be kept longer if requested by a competent authority in specific cases on proper authority.

493. The AML Law should clearly require financial institutions to maintain the information and data on clients and on transactions so it can be made available on a timely basis to the competent authority.

494. As regards wire transfers, banks and Georgian Post are obliged by the AML Law to perform any transfer only after customer identification and record keeping procedures set out in the AML Law. Concerning commercial banks, some parts of SR. VII are partially addressed in the NBG Decree N.220. However, these provisions do not apply for the Georgian Post. A clear and comprehensive legal framework covering all elements of SR. VII is lacking. This should be addressed by law, regulation or other enforceable means.

3.5.3 Compliance with Recommendation 10 and Special Recommendation VII

	Rating	Summary of factors underlying rating
R.10	**Partially compliant**	• AML Law should require the maintenance of necessary records of all domestic and international transactions and not exclusively those transactions "subject to monitoring". • Financial institutions should be permitted by law or regulation to keep all necessary records on transactions for longer than five years if requested to do so in specific cases by a competent authority upon proper authority. • Financial institutions should be required to keep identification data for longer than five years where requested by a competent authority in specific cases on proper authority.
SR.VII	**Non Compliant**	Although banks and Georgian Post are obliged under the AML Law to perform any transfer only after customer identification and record keeping (so far as it goes), there is no comprehensive legal framework addressing all the requirements as set out in SR VII in regard of commercial banks and the Georgian Post.

Unusual and Suspicious Transactions

3.6 Monitoring of transactions and relationships (R.11 and 21)

3.6.1 Description and analysis

Recommendation 11

495. Recommendation 11, which requires financial institutions to pay special attention to all complex, unusual large transactions or unusual patterns of transactions that have no apparent or visible economic or lawful purpose, needs to be provided for by law, regulation or other enforceable means.

496. Analysing the AML Law, the required "monitoring activity" consists of the following procedures:

- identification of entities that are involved in the transaction, as stated in Article 6 sections 5, 6 and 7;
- registration and systemisation of information on the transactions "subject to monitoring" as provided for by Article 6 section 4 and
- submission of such information to the FMS as imposed by Article 9 (reports on transactions subject to monitoring).

497. The Georgian AML Legislation defines which transactions are supposed to be "subject to monitoring". According to Article 5 section 1 of the AML Law, "transactions subject to monitoring" have (one or both of) the following provisions:

- the amount of the transaction or a series of transactions exceeds 30,000 GEL or its equivalent in another currency (in cash as well as non-cash settlements) and
- the transaction (regardless of its amount) evokes a suspicion as defined in Article 2 subsection h of the AML Law.

498. According to Article 2 (h) of the AML Law, the following elements or indicators are considered as examples of a "supposition" of legalising illicit income:

- the transaction does not provide verified economic (commercial) content,
- there is an unclear lawful purpose of the transaction,
- the transaction is inconsistent with the ordinary business activity of the person involved in it,
- it is impossible to ascertain the identity of the person or the origin of the funds.

499. Section 2 of Article 8 of the AML Law requires financial institutions to develop internal regulations and take adequate measures for their enforcement which should include rules and procedures *inter alia* for analysing information, revealing suspicious transactions and transferring information to FMS. Section 3 of the same Article, obliges financial institutions to systemise the information on transactions subject to monitoring.

500. As regards banks, Article 5 section 2 of the AML Law defines the following transactions as "subject to monitoring":

- transactions (regardless of its amount) that evoke a suspicion and
- transactions above 30,000 GEL or a series of transactions exceeding this threshold (or equivalent in other currency) representing the following cases:

a) Receipt of money by the entity using bank checks, in bearer form, as well as exchange of bank notes of one denomination for bank notes of another denomination;
b) Trade of foreign currency in cash form;

c) Transfer of funds to or from a bank account in Georgia, by the holders of the accounts with banks registered in non-cooperative area or off-shore area;
d) Issuance or receipt of a loan, by a person registered in a non-cooperative area or off-shore area, or any other transaction (operation) undertaken by such person through the banking institution located in Georgia;
e) Transfer of funds from Georgia to another country to the account of an anonymous entity, or transfer of funds to Georgia from the bank account of an anonymous entity in another country;
f) Contribution of funds by a person into the authorised capital of an enterprise other than the purchase of stocks of accountable enterprises, as defined under the Law of Georgia on Securities Market.
g) Placement of funds in cash to the bank account by the physical person and further transfer;
h) Extension of a loan, secured by bearer securities;
i) Extension of a loan without any security;
j) Transfer of funds from or to the account of a legal entity within three months after its registration;
k) Transfer of funds from or to the account of grant or charity assistance.

501. Consequently, banks report to the FMS exclusively transactions where the criteria from the above-mentioned list are met or where - regardless of the amount - a suspicion as defined by Article 2 of the AML Law is present. The banks indicated to the examiners that, in their view, the typologies of transaction which are subject to monitoring by them are not entirely clear without further elaboration by the FMS.

502. The FMS has the authority to define a list of specific transaction subject to monitoring for the various financial institutions (Article 5 section 5 of the AML Law; the FMS Decrees contain comparable provisions, e.g. Article 3 section 4 Decree N. 95). However, so far no such list has been issued.

503. The information and data registered for each transaction "subject to monitoring" are set out in Article 6 section 4 of the AML Law and in the FMS Decrees. Thus the emphasis is on financial institutions monitoring such transactions only. According to Article 9 section 3 of the AML Law, financial institutions are obligated to retain a hardcopy of the reporting form for no less than five years.

504. While the NBG maintains that the requirements of Recommendation 11 are part of an ongoing process, the AML Law does not contain a clear obligation to examine all unusual and complex (and, in the case of banks, all large) transactions executed by financial institutions which have no apparent economic or visible lawful purpose and to keep the results of all findings for the competent authorities and auditors for 5 years.

Recommendation 21

505. Recommendation 21 requires financial institutions to give special attention to business relationships and transactions with persons from or in countries which do not, or insufficiently apply the FATF Recommendations. This should be required by law, regulation or by other enforceable means. It places an obligation on financial institutions to pay close attention to transactions with persons from or in any country that fails or insufficiently applies FATF Recommendations and not just countries designated by FATF as non-co-operative (NCCT countries).

506. Firstly transactions above 30,000 GEL are subject to monitoring by banks where there are transfers / transactions by the holders of accounts to or from non-co-operative or offshore areas

(Article 5 section 2 letter c and d of the AML Law). Thus all such transactions need to be reported to the FMS.

507. Additionally, suspicious transactions (regardless of thresholds) include all transactions considered by all monitoring entities where any person involved in the transaction's address is located in a non-co-operative area and a transaction is transferred to or from such an area. Thus, potentially all financial institutions should report all such transactions as suspicious. In this way, it could be said that financial institutions are obliged under the law to give special attention to business relationships from or in some countries which do not or insufficiently apply the FATF Recommendations. Information on jurisdictions on the FATF list is regularly communicated to the monitoring entities.

508. Georgia has taken some steps to alert the monitoring entities to business relationships and transactions in other countries which may not apply or insufficiently apply the FATF Recommendations. They rely on communicating information on offshore zones. In this regard, FMS relies on information from the IMF, World Bank and the OECD. Thus, some measures have been taken to advise financial institutions of potential AML/CFT weaknesses in offshore zone.

509. Other than this, there was no system in place which was explained to the examiners to identify other countries about which might present AML/CFT concerns.

510. While reporting to FMS either through the STR system or through the monitoring system about transactions involving NCCT or offshore zones is in place, it was unclear if all such transactions (that have no economic or visible lawful purpose) were fully examined by the monitoring entities and whether they keep their own written findings to be available to assist competent authorities. The examiners were advised that the written material sent to the FMS on the reporting forms goes some way to meeting this requirement as the forms contain specific boxes where type, form, subject, grounds and purposes of such transactions are indicated. Full background information and written findings on these transactions should, as far as possible, be kept within the monitoring entities and should be the subject of their own analysis.

511. There is no evidence that Georgia has taken any counter measures against any countries which do not apply or insufficiently apply FATF Recommendations.

3.6.2 Recommendations and comments

512. Financial institutions are not clearly and explicitly required to pay special attention to all complex, unusual large transactions or unusual patterns of transactions that have no apparent or visible economic or lawful purpose as required by Recommendation 11. Neither are they required to examine as far as possible the background and purpose of such transactions. In practice, financial institutions do not perform complete analyses of transactions as set out in this Recommendation. Banks may do this in relation to the transactions set out in Article 5 section 2 of the AML Law but the terms of Recommendation 11 are wider than the types of transactions set out in Article 5.

513. Although the AML Law requires financial institutions to retain a hardcopy of the reporting form for no less than five years, there is not a specific requirement in the AML Law or in FMS Decrees, to set forth their findings on complex, large and unusual patterns of transactions, that have no apparent or visible economic or lawful purpose, in writing and to keep these findings available for at least 5 years.

514. The AML Law or FMS Decrees should require financial institutions to pay special attention to all types or patterns of transactions as set out in Recommendation 11, examine their background and purpose and set forth their findings in writing.

515. The Georgian authorities have taken some steps to meet Recommendation 21 by making transactions with NCCT-areas suspicious transactions and transactions over 30,000 GEL subject to monitoring by banks. This goes some way to meet the Recommendation. However, there is no overall requirement to examine as far as possible the background and purpose of such transactions which have no apparent economic or visible lawful purpose and to keep written findings.

516. Generally, a more targeted approach to advising financial institutions on potentially problematic jurisdictions other than NCCT listed countries and territories and offshore zones should be considered, which involves the Georgian authorities in making their own decisions in respect of individual states.

517. There was no evidence that information received by FMS on these issues had led to any countermeasures by Georgia, and the examiners were unaware of any mechanisms in place for so doing.

3.6.3 Compliance with Recommendations 11 and 21

	Rating	Summary of factors underlying rating
R.11	**Non compliant**	Although the definition of "suspicious transactions" broadly covers transactions which do not provide verified economic (commercial) content, have an unclear lawful purpose or are inconsistent with the ordinary business activity of the person, there is no explicit requirement for financial institutions to pay attention to and to analyse all complex, unusual large transactions or unusual patterns of transactions. There is no clear and explicit requirement for financial institutions to proactively analyse all complex, unusual large transactions or unusual patterns of transactions, that have no apparent or visible economic or lawful purpose beyond those transactions "subject to monitoring" under the AML Law. Although the AML Law requires financial institutions to retain a hardcopy of the reporting form for no less than five years, there is not a specific requirement in the AML Law or in FMS Decrees, to set forth their findings on complex, large and unusual patterns of transactions, that have no apparent or visible economic or lawful purpose, in writing and to keep these findings available for at least 5 years.
R.21	**Partially Compliant**	In the case of all transactions (with persons from or in countries which do not or insufficiently apply FATF Recommendations) which have no apparent economic or visible lawful purpose, there is no specific requirement on the financial institutions to examine the background and purpose of such transactions and set out their findings in writing and to make them available to the competent authorities. A more targeted method for advising financial institutions of countries which insufficiently apply the FATF Recommendations should be considered. There are no mechanisms in place to apply counter measures.

3.7 Suspicious transaction reports and other reporting (Recommendations 13, 14, 19, 25 and SR.IV)

3.7.1 Description and analysis

Recommendation 13

518. The AML Law is quite complex and requires numerous cross-references in order to be fully comprehensible. According to Article 9 section 1 of the AML Law, a monitoring entity is obliged to send a "written notification" to the FMS if it has "the supposition that the transaction considered under Article 5" of the AML Law is present.

519. As noted, Article 5 of the AML Law provides a definition of "transactions subject to monitoring". Section 1 of Article 5 states that concluded or implemented transactions or a series of concluded or implemented transactions are "transactions subject to monitoring", if one or both of the following provisions exist:

- The amount of the transaction or the series of transactions exceeds GEL 30,000 or its equivalent in other currency (in case of cash, as well as non-cash settlements);
- The transaction evokes a suspicion according to subsection "h" of Article 2 of this law.

520. Article 5 section 4 provides that concluded and also attempted transactions considered under Article 5 section 1 letter b) [i.e. suspicious transactions] are subject to monitoring. The Georgian authorities advised that in the Georgian language "attempt" embraces "attempted to conclude" and "attempted to execute". In respect of all monitoring entities, there is no threshold for transmitting to the FMS suspicious transactions and attempted suspicious transactions.

521. Three issues are rolled up in the definition of suspicious transaction as provided by Article 2 (h) of the AML Law. According to this definition, it is understood that suspiciousness arises, when a transaction, regardless of its amount, is supported with a grounded supposition that

- it had been concluded or implemented for the purpose of legalising illicit income or
- any person involved in the transaction is likely to be connected with a terrorist or terrorism-supporting persons, or
- the person's legal or real address or place of residence is located in a non-cooperative area and the transaction amount is transferred to or from such an area.

522. On another interpretation the "grounded supposition" could govern only the first part of the definition covering legalising illicit income. In the absence of any written guidance from the FMS, the evaluators concluded that it could govern all three parts of the definition. The Georgian authorities advised the evaluators that the words "grounded supposition" were introduced in order to ensure that there was an exercise of judgement by the monitoring entities before transmission of reports to the FMS. In their view there is little or no difference between "grounded supposition" and "reasonable grounds to suspect" as set out in the FATF Recommendation. That said, "grounded supposition" could also be interpreted in a slightly stricter way by the monitoring entities, as requiring a higher degree of proof than reasonable grounds to suspect.

523. According to Article 2 (h) of the AML Law, the following elements or indicators are considered as examples of a "supposition" of legalising illicit income:

- the transaction does not provide verified economic (commercial) content,
- there is an unclear lawful purpose of the transaction,

- the transaction is inconsistent with the ordinary business activity of the person involved in it,
- it is impossible to ascertain the identity of the person or the origin of the funds.

524. The overall definition of suspicious transactions includes both objective indicators (e.g. located in a non-co-operative area) and ones which are objective / subjective and require the application of judgment by the monitoring entity. The examiners considered whether the language of Article 2 (h) overall is unduly restrictive and does not leave sufficient discretion to the financial institutions to decide independently what is suspicious in the context of legalising illicit income. The Georgian authorities maintain that the examples cited in the law are only indicators and do not exclude other grounds of suspicion. The use of "etc" in the bracket in Article 2 (h) supports this view and the Georgian authorities also pointed to Article 9 section 1 last sentence of the AML Law. The same approach is taken in some of the regulations issued by the FMS. For brokerage houses (Annex 23), there is also a further list of transactions which may be suspicious, thus leaving the discretion to monitoring entities to consider other types of transaction. By contrast, the regulation for exchange bureaus has no further guidance in it on what is suspicious, and the only reference to the concept of suspiciousness is in Article 2 (h) of the AML Law. The examiners accepted that the suspicious transaction reporting regime relating to legalisation of illicit income is sufficiently broad in all the circumstances to include other indicators of suspicion, though more guidance for all financial institutions would help, especially as the evaluators were told by representatives of the financial institutions that they would appreciate receiving further guidance notes or instructions on how to determine whether a transaction is suspicious.

525. Reporting of transactions (concluded or implemented or attempted) for legalising illicit income presumably covers all offences required to be included as predicate offences under Recommendation 1, with the exceptions of financing of terrorism in all its forms and insider trading as it is generally understood (see section 2.1). Although the preventive law excludes crimes committed in the tax and customs spheres, the Georgian Authorities advised that the requirement to report suspicious transactions does apply to all suspicious matters, regardless of the predicate offence (including tax). There is no law or regulation which makes it clear that predicate offences required under Recommendation 1 should be covered in the reporting obligation. In the context of tax, the monitoring entities are faced with the clear terms of the definition of illicit income in the Act which excludes crimes committed in the tax and customs spheres. It has already been indicated earlier that the examiners consider that this exemption should be removed. In the context of Recommendation 13, the international standards specifically require financial institutions to report suspicious transactions regardless of whether tax matters are involved. Although the general reporting obligation is set out in the law (and this is an asterisked obligation), the requirement that STR reporting should be in a direct mandatory obligation which covers all predicate offences required under Recommendation 1 is not fully satisfied.

526. Under Article 9 section 2 of the AML Law, financial institutions are required to report to the FMS suspicious transactions "*no later than within three working days from the moment of conclusion or implementation of the transaction or from the moment the grounded supposition arose*". If the financial institutions have the supposition that any party of the transaction "*is related with terrorist or persons supporting terrorism, the monitoring entity shall be obligated to send the report to the Financial Monitoring Service of Georgia on the day the information is received*". The evaluators were informed that STRs usually are submitted within 24 hours and no later than within two days. However, the statutory provision as it stands is not fully in accordance with Recommendation 13 and the Interpretative Note, which requires financial institutions to report promptly to the FIU their suspicions in relation to both money laundering and financing of terrorism.

527. Pursuant to the AML Law, suspicious transactions should be submitted on special reporting forms to the FMS in hard copy as well as electronically. Reporting forms are approved, as noted,

under FMS Regulations by categories and the specifics of the monitoring entities. Under Article 9 section 3 of the AML Law, financial institutions are obliged to retain a hard copy of the reporting form for not less than five years. Figures on STRs are provided in section 2.5 of the report.

Additional Elements

528. The Georgian authorities considered that the reporting obligation would cover funds which are the proceeds of all criminal acts that currently constitute predicate offences for money laundering domestically, though, as noted, the requirement as such is unclear.

European Union Directive

529. Article 6 Paragraph 1 of the Directive 1991/308/EEC provides the reporting obligation to cover facts which might be an indication of money laundering, whereas FATF Recommendation 13 places the reporting obligations on suspicion or reasonable suspicion that funds are the proceeds of criminal activity.

530. The AML Law requires monitoring entities to report any transaction suspected to be related to money laundering (so called "transactions subject to monitoring") and facts /circumstances which, according to the written instruction of the FMS, may be related to money laundering or financing terrorism. However, the FMS has not yet issued any written instruction on suspiciousness of facts/circumstances related to money laundering or financing terrorism. The FMS indicated that they had from time to time written to monitoring entities asking them, on their own initiative to provide information on particular persons and companies in respect of which the FMS was interested if they came to their attention. In practice, the reporting obligation seems to be limited to transactions and it does not include other facts that could constitute evidence of money laundering.

531. The Georgian authorities took the view that the concluding sentence of Article 9 section 1 of the AML Law in the Georgian language but not in the English translation reads "The Financial Monitoring Service shall be informed also about all those facts (circumstances) that in the judgment of the monitoring entity may be related to legalization of illicit income or financing terrorism". They considered that the use of the word "also" constitutes a separate obligation, distinct from suspicious transaction reporting and thus the obligation is wider than the linkage to the definition of suspicious transaction in Article 2 (h).

532. Article 7 of the Second Directive (2001/97/EC) requires states to ensure that institutions and persons subject to the Directive refrain from carrying out transactions which they know or suspect to be related to money laundering until they have apprised the authorities (unless to do so is impossible or is likely to frustrate efforts to pursue the beneficiaries of a suspected money laundering operation). The Georgian legislation does not explicitly cover this requirement.

Special Recommendation IV

533. Suspicious transactions relating to terrorism are explicitly defined in the cumulative definition of suspicious transaction in Article 2 (h) of the AML Law. It is understood that any transaction is suspicious in connection with TF when there is a grounded supposition that "any person involved in the transaction is likely to be connected with a terrorist or terrorism-supporting persons". Such transactions are subject to reporting by virtue of Articles 9 and 5 of the AML Law. There is no regulation or guidance to monitoring entities about the FT aspect of suspicious transactions. In practice, the examiners understood that most reports received under this obligation would relate to names on UN-lists. Indeed, when the obligation was put into the law there was, of course, no separate offence of financing of terrorism and it was necessary to create a legal mechanism to deal

with the UN-lists. The FIU have indicated that they have received three reports (on the standard AML suspicious reporting form), which could be characterised as suspicious transaction reports related to terrorism, separate from the UN-list procedure. One related to a person named in the newspapers who was reported to the FIU by a commercial bank. The other related to large receipts of money by a commercial bank from a charitable organisation which aroused suspicion. The third related to large cash movements to an account held by a natural person. Thus, it could be argued that there is a regime for the reporting of suspicious transactions as described by SR.IV, as well as for the obligations of SR.III. One difficulty with this is, that the language of Article 2 (h) refers to transactions and does not clearly cover the language of the Methodology on SR.IV, which requires reporting entities to report where they suspect or have reasonable grounds to suspect that funds (including those deposited in financial institutions) are linked to or related to, or to be used for terrorism, terrorist acts or by terrorist organisations or those who finance terrorism. Moreover, the link to "persons" arguably could exclude transactions relating to legal entities (at least without further clarification). Even if, on a broad interpretation, "funds" are intended to be included in respect of this reporting obligation, there is no clarity as to whether both illicit and also licit funds would be covered.

534. For completeness, the examiners have considered in this context two other provisions. Article 9 section 1 of the AML Law appears to deal with the formalities of reporting to FMS by monitoring entities. Under this provision if the monitoring entity has the supposition that the transaction considered under Article 5 of the law is present (which includes reference back to the definition of suspicious transactions in Article 2 [h]), the monitoring entity *inter alia* should include the grounds for considering the transaction as suspicious. In this context they should inform the FMS about all those facts (circumstances) that in the judgment of the monitoring entity may be related to (legalisation of illicit income or) financing of terrorism. This is the only clear reference to suspicious transaction reporting in this context. However, it has to be read, according to the law, in relation to the definition in Article 2 (h) which links this whole issue to "persons".

535. As noted before under Article 6 Paragraph 1 of the Directive 1991/308/EEC, the Georgian authorities drew the attention of the examiners to the concluding sentence of Article 9 section 1 of the AML Law (see above).

536. Article 10 section 4 (f) of the AML Law could be regarded as another provision which reinforces an obligation to fully report in all the circumstances in SR.IV. However, the obligation "to apply to the court for the purpose of sealing the property (bank account) or suspending a transaction (operation) if there is the grounded supposition that the property (transaction amount) may be used for financing of terrorism" is addressed only to the FMS and not to the monitoring entities. If the references [in Article 10 section 4 (f), Article 9 section 1 and Article 2 (h)] are intended to be interpreted cumulatively as covering all the requirements of the STR obligation under SR.IV, then, in the examiners' view, this is insufficient, as SR.IV requires a clear direct mandatory obligation on financial institutions. As the reporting obligation is currently governed by the definition of suspicious transactions in Article 2 (h) then it is difficult to identify a clear obligation under SR.IV.

537. In the context of SR.IV what is said above in relation to criteria 13.3 and 13.4 applies equally here.

538. In all the circumstances (including the limited numbers of examples given to the evaluation team of possible reports on this basis), the examiners consider that the suspicious reporting obligation in connection with SR.IV needs to be clarified to ensure that monitoring entities are clearly obliged to report where they suspect or have reasonable grounds to suspect that funds of legal and physical persons (whether licit or illicit) are linked or related to, or to be used for terrorism, terrorist acts or by terrorist organisations or those who finance terrorism.

Safe Harbour Provisions (Recommendation 14)

539. According to Article 12 section 3 of the AML Law, the FMS, the supervisory bodies, the financial monitoring entities (financial institutions included), their management and employees are not "to be held accountable" for failure to observe confidentiality of information considered under a normative act, or under an agreement, as well as for protection or referral of such information (except for commitment of the crime considered under the Criminal Code of Georgia). The Georgian authorities advised that "management and employees" as mentioned in Article 12 section 3 of the AML Law includes directors, officers and employees and presumably this includes permanent and temporary staff members, as required by criterion 14.1.

Tipping off (Recommendation 14)

540. As regards confidentiality of the information reported to the FMS, Article 12 (1) of the AML Law provides that the "*Financial Monitoring Service of Georgia, monitoring entities and supervisory bodies shall not be authorised to inform parties to the transaction or other persons that the information on transaction has been forwarded to the relevant authority in conformance with obligations defined under this law*". Tipping off is institutionalised, in that this provision does not explicitly apply to directors, officers and employees as set out in Recommendation 14.

541. Section 2 of Article 12 states that the FMS, the monitoring entities and supervisory bodies, their management and employees shall be obligated to ensure the protection of the information obtained pursuant to the AML Law during their activities but are obliged to disclose confidential information to the FMS pursuant to the applicable Georgian legislation, i.e. the AML Law.

542. Consequently "tipping off" a customer or a third party is prohibited, but the AML Law does not provide for either criminal liability in respect of Article 12 or any administrative sanction for such conduct. The Georgian authorities pointed to Article 202 CCG, which generally penalises the unlawful disclosure of information containing commercial or bank secrets (Annex 4). This provision does not appear apt for penalising the fact that an STR has been made. Reference has also been made to the possibility of sanctioning under other laws, regulations or decrees. The problem with administrative sanctioning discussed beneath at section 3.10 is that there is no clear obligation on the supervisory authorities to consider sanctioning each and every obligation set out in the AML Law. In practice, it is necessary to study the relevant decrees etc. in each sector to establish precisely which obligations in the AML Law are sanctionable. The sanctioning requirements are covered in various provisions:

- Article 30 section 2 of the Law of Georgia "On the Activity of Commercial Banks" in conjunction with Article 2 section 8^1 of the Regulation on Determining and Imposing Pecuniary Penalties on Commercial Banks (approved under Decree N. 304 of the President of the NBG; changes introduced under Decree N. 267 of 2 December 2004 of the President of the NBG for commercial banks;
- Article 13 sections 7 and 8 of the NBG Decree N.9 for currency exchange bureaus;
- Article 6 section 2 of the NBG Decree N.257 for credit unions;
- Article 3 section 1 (a) and (c), Article 4 section 1 (a) and (b) of the Resolution N.38 of the National Securities Commission of Georgia for brokers and registrars.

543. The evaluators cannot find in any of these requirements a clear obligation specifically to sanction tipping off, though the Georgian authorities consider that all obligations in the AML Law are potentially sanctionable. In practice, no one has been sanctioned either criminally or administratively for tipping off, so far as the examiners are aware.

Additional elements

544. The AML Law does not provide for protection of anonymity of those employees of monitoring entities that submit information to the FMS. However, the FMS does not disclose such information.

Recommendation 19

545. As regards banks, Georgian AML Legislation requires to "subject to monitoring" (that is to keep recorded information on transactions and on clients and to report it to the FMS) all cash and non cash transactions exceeding 30,000 GEL (or its equivalent in another currency) representing the operations described in the AML Law (Article 5 section 2).

546. For the remaining financial institutions, transactions "subject to monitoring" are all operations in cash and non cash exceeding the above mentioned threshold regardless of the typologies of operations involved.

547. Transactions "subject to monitoring" are submitted in hard copy as well as in electronic form. The FMS has created a data-base in which all incoming reporting forms are stored and then analysed by FMS experts. This database ensures systemisation and confidentiality of information. In addition, electronic versions of reporting forms were developed, which were distributed to financial institutions. The database, as well as the distributed software, is equipped with protection mechanisms. The information is encoded and it can only be decoded by employees of the FMS and the financial institutions.

548. The information submitted to the FMS on transactions "subject to monitoring" can be classified in two categories:
- information on transactions (type, form, date and place, amount and currency);
- information on the persons involved in the transactions (person at whose order the transaction is concluded or undertaken and the person by whom the transaction is being concluded or undertaken).

549. The evaluators were informed that not all banks are able to submit the reporting forms within three working days to the FMS; in particular, banks which are located outside of Tbilisi have particular problems. Due to the low level of computerisation, also notaries, currency exchange bureaus and some credit unions are not yet able to submit electronic versions of reporting forms.

550. As regards banks, the evaluators were informed that on-site inspections have revealed some deficiencies in the reporting regime. As noted above, most banks are not able to report within 3 working days the transactions "subject to monitoring" as prescribed by Article 9 of the AML Law. For this reason, representatives of the banking industry informed the evaluators that the Georgian Banking Association is developing a unique software programme for all banks on reporting transactions "subject to monitoring" but, at the moment, there remain problems of inadequate IT in several banks.

Recommendation 25

551. According to Article 7 of the Ordinance N. 354 of the President of Georgia "on Establishing the Legal Entity of the Public Law – Financial Monitoring Service of Georgia" (Annex 354), the FMS is obliged to submit reports on performed work to the Council of the NBG twice a year; on the other side, neither this ordinance nor the AML Law obliges the FMS to provide specific feed back to the financial institutions.

552. The evaluators considered that the FMS has good relations with financial institutions, providing them with recommendations and consultations but, other than an acknowledgement of the receipt of the reports, there is no specific feedback which would assist the monitoring entities in detecting suspicious transactions or case specific feedback, such as that information had been passed to the General Prosecutor or that criminal proceedings have been instituted on the basis of their report(s). Likewise, other than what is in the Law and some Regulations, there is no real guidance. The FMS does not provide for general feedback concerning statistics on the number of disclosures, with appropriate breakdowns, and on the results of the disclosures, information on current techniques, methods and trends and sanitised examples of money laundering or financing of terrorism cases. The FMS has not established guidelines to assist monitoring entities on issues such as description of money laundering and financing of terrorism techniques.

3.7.2 Recommendations and comments

553. As a general point, the law is difficult to follow and requires consideration of numerous different provisions to try to ascertain its meaning. This is particularly the case in respect of the SR.IV obligation. Overall the examiners consider that the law needs simplifying.

Recommendation 13

554. A reporting regime on suspicious transactions related to ML/FT is required in the AML Law. The suspicious transactions reporting regime is quite complex in its construction with some general (but not exclusive) indicators in the AML Law and some specific indicators in some of the Decrees beyond what is in the Law. However, as noted, the examiners have concluded that overall there is a clear intention in the AML Law and Decrees not to exclude any grounded supposition which a monitoring entity may have in respect of legalising illicit income which is not specifically referred to. However, the examiners advise that this could be made much clearer in the legislation and that the words "grounded supposition" should be reconsidered and replaced by "reasonable grounds to suspect", as the present formulation might be interpreted by monitoring entities more strictly than the standard requires.

555. In terms of money laundering, Recommendation 13 should apply to all offences required to be included under Recommendation 1. In Georgia, at the time of the on-site visit financing of terrorism in all its forms was not covered and insider trading as it is generally understood appeared not to be covered. There needs to be a clear mandatory requirement that all predicate offences required under Recommendation 1 should be the subject of suspicious transaction reports.

556. According to the explicit requirements of Recommendation 13, the AML Law should require financial institutions to report *promptly* to the FMS. Article 9 section 2 of the AML Law in its present formulation does not meet this requirement and should be reconsidered.

557. There is no explicit provision in the AML Law that obliges financial institutions to make an STR applying to funds related to terrorism, terrorist acts or terrorist organisations or those who finance terrorism which is not exclusively related to transactions.

558. Concerning the reporting regime related to tax matters, it seems clear that tax matters are excluded from suspicious transaction reporting. The STR regime should extend to suspicious transaction reports involving tax (see the Interpretative Note to Recommendation 13).

559. Given that there is only very general guidance to most of the monitoring entities on what amounts to a suspicious transaction, the number of suspicious transaction reports (see para. 225

above) has been rising since 2004, particularly in the banking sector. The FMS should satisfy itself that there is an even spread of reporting in the banking sector. It is important that more is done to explain the concept of suspicion to non-bank financial institutions. While brokerage companies and security registrars have begun reporting, it is notable that the exchange houses and insurance companies have made no suspicious transaction reports at all since the inception of the FMS. The FMS should actively pursue outreach to those financial institutions which are either not reporting or underreporting suspicious transactions. Financial institutions should receive guidance notes or instructions on how to determine whether a transaction is suspicious.

Special Recommendation IV

560. The examiners consider that the suspicious reporting obligation in connection with SR.IV needs to be clarified to ensure that monitoring entities are clearly obliged to report where they suspect or have reasonable grounds to suspect that funds of legal and physical persons (whether licit or illicit) are linked or related to, or to be used for terrorism, terrorist acts or by terrorist organisations or those who finance terrorism.

Recommendation 14

561. The first element of Recommendation 14 ("safe harbour provisions") is addressed in Article 12 (3) of the AML Law, though the terms of the protection it provides are not entirely clear. "Not held accountable" is rather vague, and sounds like civil rather than criminal liability. It should be clarified that the safe harbour provisions protect staff of financial institutions from criminal and civil liability, where they perform bona fide acts in accordance with their obligations under the AML Law. It would also assist if it was clarified that the safe harbour provisions apply to all staff of financial institutions (permanent or temporary).

562. "Tipping off" is prohibited in respect of institutions under Article 12 (1) of the AML Law. It is not criminalised in its own right either in the AML Law or elsewhere in the Criminal Code. The Georgian authorities pointed to other provisions in the Criminal Code (Article 202), which do not cover tipping off in all its aspects. There have been no criminal sanctions for tipping off. The Georgian authorities considered that tipping off is sanctionable administratively. However, the examiners cannot find clear authority in the relevant sectoral laws and all decrees which the examiners have seen for this proposition. In practice, no one has been sanctioned administratively for tipping off. The examiners recommend that a clear provision of general application should be introduced which covers tipping off not simply in respect of institutions but which covers directors, officers and employees (permanent or temporary) and for which there are clear sanctions (whether criminal or administrative).

Recommendation 19

563. Georgia has considered and implemented a system whereby financial institutions, except banks, submit information to the FMS on all transactions exceeding the threshold of 30,000 GEL. Banks are required to report to the FMS the transactions or a series of transactions exceeding this threshold which are listed in the Law. This decision was taken for purely practical reasons and clearly the spirit of Recommendation 19 is more than met. The FMS would benefit from having more appropriate tools for using the information in their computerised database, and more guidance on the list of transactions subject to monitoring by banks would assist.

Recommendation 25

564. FMS is in close contact with the financial institutions. It is a significant gap that there is little guidance concerning AML/CTF issues and for that reason the evaluators strongly advise the Georgian authorities to develop more sector specific guidance and guidance on money laundering

trends and typologies generally. The FMS should establish appropriate feedback mechanisms: a general feedback on statistics, information on methods and appropriate case specific feedback. Moreover, the FMS should provide more guidance that would assist financial institutions to detect suspicious transactions.

3.7.3 Compliance with Recommendations 13, 14, 19, 25 and Special Recommendation SR.IV

	Rating	Summary of factors underlying rating
R.13	**Partially compliant**	• The reporting requirement which should be in law or regulation should clearly cover all predicate offences required under Recommendation 13. The requirement to report suspicious transactions should clearly cover tax matters. • There is no clear legal requirement to report funds suspected to be linked or related to financing of terrorism as required by criterion 13.2 • The language of "grounded supposition" should be replaced with "reasonable grounds to suspect". • More guidance and outreach required to ensure that all financial institutions are reporting suspicious transactions (effectiveness).
R.14	**Partially compliant**	• Safe harbour provisions should cover temporary as well as permanent staff. • The protection in Article 12 (3) AML Law should clearly apply to criminal as well as civil liability. • "Tipping off" is institutionally prohibited and should clearly cover the individual persons covered in FATF Recommendation 4. It is not criminally sanctionable and no administrative sanctions are provided in the AML Law. A clear provision of general application sanctioning tipping off by employees by financial institutions (as well as the financial institutions themselves) should be provided.
R.19	**Compliant**	
R.25	**Partially compliant**	There are some general guidelines or indicators in the AML Law and in some of the regulations. The FMS should issue guidelines that will assist financial institutions to implement and comply with their respective AML / CFT requirements and provide adequate and appropriate feedback in line with the FATF Best Practice Guideline on Providing Feedback to Reporting Financial Institutions and Other Persons.
SR.IV	**Partially compliant**	• There is no clear requirement in law or regulation to ensure that financial institutions are clearly obliged to report where they suspect or have reasonable grounds to suspect that funds of legal and physical persons (whether licit or illicit) are linked or related to, or to be used for terrorism, terrorist acts or by terrorist organisations or those who finance terrorism (apart from transactions involving persons that are on terrorist lists). • The three reports to FMS said to be reports under SR.IV (though reported on the general report form) were insufficient for the evaluators to conclude that there is a real and effective STR reporting system relating to SR.IV (which is distinct from SR.III) which is understood as such by all the financial institutions.

Internal controls and other measures

3.8 Internal controls, compliance, audit and foreign branches (R.15 and 22)

3.8.1 Description and analysis

Recommendation 15

Generally

565. Recommendation 15, requiring financial institutions to develop programmes against money laundering and financing of terrorism, can be provided for by law, regulation or other enforceable means.

566. Article 8 of the AML Law obliges financial institutions that are monitoring entities to develop internal control procedures for the purpose of preventing legalisation of illicit income. These measures include customer identification procedures, analysis of transactions "subject to monitoring" including suspicious transactions and the development of procedures – such as a registration database system - for transferring information on transactions "subject to monitoring" to the FMS. The FMS is authorised to set out principles which need to be addressed by these internal control regulations and the FMS has the right to recall and review internal regulations and indicate to monitoring entities non-compliance with normative acts and request correction (Article 8 section 2). For this reason, the relevant FMS Decrees contain provisions on the implementation of internal controls. The supervisory authorities informed the evaluators that all financial institutions have implemented internal regulations and controls on the basis of these FMS Decrees. The Security Market Commission conducts onsite inspections verifying and assessing the adequacy of internal controls for the brokerage companies and the NBG regularly inspects banks, credit unions and exchange bureaus as regards AML/CFT obligations and when applicable applies sanctions against supervised entities for delayed submission or non-submission of reports as well as for other violations on customer identification requirements and record keeping requirements.

567. According to Article 8 sections 2, 4 and 5 of the AML Law, the management body of financial institutions have to appoint a structural unit or an employee (for banks this employee is called "employee in charge of monitoring") that is in charge of revealing suspicious transactions and reporting them to the FMS, take control over the implementation of the internal regulation and the submission of written information on transactions "subject to monitoring" to the management body of the financial institutions, in compliance with the procedure and frequency defined under the Regulation.

568. Neither the AML Law nor the FMS Decrees clearly require the designation of an AML/CFT compliance officer at management level. The structural unit or the relevant staff member reports directly to management. The Georgian authorities pointed out that the internal regulations of the financial institutions provide specific requirements about timely (immediate) access of compliance officers to the relevant information. It was said that only in very exceptional situations (e.g. power cuts, IT systems, failures, etc.) problems occur. However, there is no clear legal authority in the AML Law or Decrees for the compliance officer/unit to have access to all information needed to perform his/her/its functions.

569. Neither the AML Law nor FMS Decrees require financial institutions (except for banks and credit unions; see below) to implement and maintain an adequately resourced and independent audit function to test compliance with internal procedures.

570. According to Article 8 section 6 of the AML Law, financial institutions are required to provide periodic training for the employees "involved in the process of detecting the facts of legalising illicit income". This provision has been stressed within the FMS Decrees. The amount and quality of internal training overall was unclear. The NBG stated that in their supervision they look at a bank's readiness to "prepare" well qualified staff in this area. It is understood that the FMS regularly provides monitoring entities with consultations relating to the monitoring process, and invites them to seminars organised in cooperation with international organisations. Given that the number of STRs has been steadily increasing, it is fair to say that awareness of the issues is growing.

571. Neither the AML Law nor other provisions of the supervisory authorities contain obligations on financial institutions to put in place screening procedures to ensure high standards when hiring employees. However, the Georgian authorities assured that all financial institutions hire employees according to their internal rules only on a competitive basis.

Banks

572. As regards banks, Article 4 para 3 of the Regulation under FMS Decree N.95 "on Receiving, Systemizing and Processing the Information by Commercial Banks and Forwarding to the Financial Monitoring Service of Georgia" (Annex 17) requires banks to develop internal regulations on the basis of the AML Law. These regulations shall set terms for: identification of the bank's clients, persons wishing to establish a business relationship with the bank and other relevant persons; systemizing, analyzing and filing the information obtained as a result of the identification process; revealing transactions (bank operations) subject to monitoring and submission of special reporting forms to the FMS. The regulations must be approved by the respective Supervisory Council or Board of Directors and all banks' employees are required to become acquainted with these internal regulations. These regulations shall also contain the functions, authority and responsibility of the "employee in charge of monitoring" whose functions are set out by Article 5 of this Regulation. Furthermore, the functions, authority and responsibility of other employees including administrator involved in the "monitoring process" have to be included in internal regulations.

573. The internal regulations set procedures and measures for the "monitoring process" on assessment of transactions as suspicious and on reporting the operations to the FMS. Moreover confidentiality of the information is required to be ensured during the "monitoring process". The internal regulations shall also prevent participation of banks' employees in ML/FT.

574. On the "monitoring process" the employee in charge of monitoring shall report at least once a year to the bank's management.

575. Under the FMS Decree N.95, the "employee in charge of monitoring" has the authority to obtain any information necessary for fulfilment of his functions and he/she is obliged to ensure confidentiality of the information acquired during his/her activity. This FMS Decree allows banks' employees to conduct within the bank only such activities (besides those related to the monitoring) which are not connected with the signature of "settlement or accounting documents (other than documents related to monitoring), as well as documents related to the bank's liabilities and realisation of rights" (Article 5 section 8).

576. According to NBG Decree N. 318 of 28 December 2001 ("Regulation on Internal Audit Requirements for Commercial Banks"), all commercial banks are obliged to establish an independent internal audit unit (Article 3, section 1; Article 4, section 2) which is entitled to test

all issues of banking activity, including compliance with AML/CFT measures. It was unclear how far AML/CFT systems are audited in practice.

577. Under the AML Law, financial institutions have to develop periodic training for the employees involved on AML/CFT procedures. The Georgian Banking Association informed the evaluators that it is planning to conduct specific courses for compliance officers on domestic legislation and regulations and on international AML/CFT standards. The NBG confirmed that commercial banks provided internal trainings on AML/CFT issues for their employees on a regular basis. Training materials were submitted to the NBG supervisors during their onsite inspections.

Other financial institutions (insurance, exchange bureaus and brokerage companies, credit unions, postal organisations)

578. The FMS Decrees for the other financial institutions contain similar provisions on internal controls as those set out for banks. However, comparing the different FMS Decrees, it is possible to detect some deficiencies compared with the FMS Decree N.95 for banks.

579. As regards the insurance sector, FMS Decree N.100 (Annex 21) does not prohibit insurance companies' employees in charge of monitoring to conduct other activities as stated e.g. in the FMS Decree for banks (see above). However, this Decree requires that all the insurance companies' employees become acquainted with internal regulations dealing with the prevention of the legalisation of illicit income.

580. For exchange bureaus and brokerage companies, only the general provision of Article 8 section 6 of the AML Law applies, but the FMS Decrees N.96 and N.101 (Annexes 22 and 23) do not contain provisions on implementation of training programs for their employees and on the elements that the internal control regulation should contain and does not specify the functions and obligations that the "employee in change of monitoring" should perform.

581. The FMS Decree N. 104 for credit unions (Annex 25) does not contain provisions on training programs for employees of credit unions and does not specify the functions and obligations that the "employee in charge of monitoring" should perform. The NBG considered, however, during its AML/CFT on-site inspections the internal policy and procedures of credit unions and noted that specific AML/CFT training for employees was provided on a regular basis.

582. FMS Decree N.102 (Annex 26) does not contain instructions for internal control concerning AML/CFT requirements for postal organisations.

583. Credit Unions are obliged to invite annually an external auditor which assesses credit union's compliance with existing legislation and regulations (Article 11 of the Law on Credit Unions; NBG Decree N. 90 of 7 May 2004 "Regulation on Conducting external audit of credit unions").

Additional elements

584. Article 5 (6) of the FMS Decree N. 95 "on Receiving, Systemizing and Processing the Information by Commercial Banks and Forwarding to the Financial Monitoring Service of Georgia" indicates that the employee (or special structured unit) in charge of monitoring shall be subordinated and report only to the administrator of the bank. This situation is replicated in the regulations for the other financial institutions. The obligation under Article 8 section 5 (b) of the AML Law of the responsible person or structural unit to submit written information on the transactions subject to monitoring was understood to refer to general reports on the implementation of the systems and not on individual decisions to report to FMS, where the unit or responsible person is able to act independently.

Recommendation 22

585. Currently, the Georgian banking industry is not represented abroad and thus the risks appear low. However, it cannot be excluded that Georgian financial institutions will operate abroad in the future, and the requirements of FATF Recommendation 22 will then need more attention in the financial sector generally.

586. It has to be noted therefore that neither the AML Law nor FMS Decrees require Georgian financial institutions to ensure that their branches and subsidiaries located abroad observe AML/CFT measures which are in line with the domestic AML legislation. Consequently, there are no provisions that require financial institutions to inform supervisory bodies when a branch or a subsidiary is unable to observe appropriate AML/CFT measures. There are no general provisions in either law, regulation or other enforceable means which would cover criteria 22.1, 22.2 (and 22.3) for financial institutions generally.

Additional elements

587. Georgian banks own some insurance companies and brokerage companies and each subsidiary carries out customer identification requirements on its own, and financial institutions are not obliged to develop consolidated CDD measures at group level.

588. At the time of the on-site visit, banks from Armenia, Russia and Kazakhstan have subsidiaries, and banks from Turkey and Azerbaijan have branches in Georgia. The evaluators were informed that those banks are required to observe Georgian AML/CFT measures.

3.8.2 Recommendation and comments

Recommendation 15

589. The AML Law requires financial institutions to adopt internal control procedures and regulations for the purpose of preventing legalisation of illicit income. FMS Decrees specify and extend these provisions of the AML Law.

590. The more comprehensive provisions set out in FMS Decree N.95 for banks should be extended to the FMS Decrees for the other financial institutions (insurance sector, exchange bureaus and brokerage companies, credit unions, postal organisations).

591. As regards compliance officers units, a person should be designated at the management level and should have legal authority to obtain information necessary for correct execution of his/her functions.

592. The AML Law and/or FMS Decrees should require all financial institutions to maintain an adequately resourced and independent audit function to test compliance.

593. While the obligation to provide periodic training to financial institutions is in the AML Law, this should be an ongoing process, which ensures that employees are kept informed of new developments, including information on current ML/FT techniques, methods and trends, and that there is a clear explanation of all aspects of AML/CFT Laws and obligations, particularly on CDD requirements and suspicious transaction reporting. It is advised that the obligation be made clearer to require ongoing training to ensure that Criterion 15.3 is fully observed, and that more attention should be paid to the quality of internal training in supervision.

594. The AML Law and FMS Decrees do not contain obligations on financial institutions to establish screening procedures to ensure the high standards for hiring employees.

Recommendation 22

595. There is no general provision in either law, regulation or other enforceable means which would cover criteria 22.1, 22.2 (and 22.3) for financial institutions. Though at present the risks in this area appear low, this issue should be covered, at least by enforceable means, taking into account essential Criteria 22.1 and 22.2. The AML Law and FMS Decrees should require financial institutions to ensure that their foreign branches observe AML/CFT requirements consistent with "home country" requirements and the FATF Recommendations, paying particular attention when these subsidiaries are located in a country which insufficiently applies FATF Recommendations. The financial supervisors (together with FMS) will need to ensure that more guidance is given which assists financial institutions in making decisions on countries which may insufficiently apply FATF Recommendations (beyond those which may be listed by the FATF as non-co-operative and offshore territories).

3.8.3 Compliance with Recommendations 15 and 22

	Rating	Summary of factors underlying rating
R.15	**Partially compliant**	• Clear provision should be made for compliance officers to be designated at management level. • Apart from banks and credit unions, financial institutions are not required to implement and maintain an adequately resourced and independent audit function. • There is no requirement to establish ongoing training for employees on current ML/FT techniques, methods and trends. • There is no obligation on financial institutions to establish screening procedures to ensure high standards when hiring employees.
R.22	**Non-compliant**	• Though the risks are low at present, there is no specific requirement on the financial institutions to require the application of AML/CFT measures to foreign subsidiaries consistent with home country requirements. • There is no provision that requires financial institutions to inform their home country supervisor when a foreign subsidiary or branch is unable to observe appropriate AML/CFT measures.

3.9 Shell banks (Recommendation 18)

3.9.1 Description and analysis

596. The Georgian legislation does not contain a definition of "shell banks" as set out in the glossary of the FATF Recommendations.

597. Articles 3 to 5 of the "Law of Georgia on Activities of Commercial Banks" (Annex 18) define the procedures for licensing a bank in Georgia. These provisions do not clearly require the physical presence of a bank in Georgia, but the cumulative effect of the requirements (for constitutive documents, information on significant shareholders) seems to imply the need for

a physical presence. Also the Georgian authorities assured that the current legal framework does not allow in any circumstances to open a bank without its physical presence in Georgia.

598. Licences to foreign bank branches are only granted where the foreign bank is authorised to engage in the business of receiving of deposits in its home country. Licences applied by foreign banks are only granted following consultations between the NBG and the competent supervisory authorities in the foreign country. While no reference is made in these requirements to the clear need for a physical presence in Georgia, the Georgian authorities pointed out that foreign branches are inspected by the NBG examiners or appointed auditors according to the same procedures as resident banks. In this way, although there is no explicit prohibition on shell banks, the Georgian authorities argue that licensing and inspection go some way to guarding against shell banks in practice. The Georgian authorities considered that at the time of the on-site visit, shell banks did not exist in Georgia.

599. With regard to entering into or continuing correspondent relationships with shell banks, the Georgian authorities drew attention to the controls in Article 6, para. 3, NBG Decree N. 51 (Annex 16), which states that opening correspondent accounts is only possible under the following conditions: in the National Bank of Georgia and its branches; for head offices of banks; in head offices of other commercial banks. In each case of opening new correspondent accounts, opening and servicing parties shall be obligated to immediately notify the NBG Bank Supervision and Regulation Department. While this also may go some way to act as a barrier against correspondent banking relationships with shell banks, the Georgian authorities conceded that there is no law, regulation or enforceable guidance which clearly prohibits financial institutions from entering into or continuing a correspondent business relationship with shell banks.

600. Similarly there are no other laws, regulations or enforceable guidance which require financial institutions to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by "shell banks".

3.9.2 Recommendations and comments

601. Though the "Law of Georgia on Activities of Commercial Banks" clearly defines the requirements to obtain a licence for banks, and domestic banks and foreign branches are regularly inspected, there should be an explicit prohibition against shell banks being established in Georgia.

602. The Georgian banking legislation permits the NBG to control the respondent counterparts, but it does not prohibit Georgian banks opening accounts for shell banks or providing services for shell banks.

603. Neither the AML Law nor FMS Decrees require financial institutions to satisfy themselves that foreign respondent financial institutions do not permit that their accounts to be used by shell banks.

3.9.3 Compliance with Recommendation 18

	Rating	Summary of factors underlying rating
R.18	**Partially compliant**	• There is no explicit prohibition on establishment of shell banks. • There is no specific provision for the financial institutions to prohibit to enter into, or continue, correspondent banking relationship with shell banks. • There is no specific requirement on the financial institutions to satisfy themselves that foreign respondent financial institutions do not permit their accounts to be used by shell banks.

Regulation, supervision, monitoring and sanctions

3.10 The supervisory and oversight system - competent authorities and SROs / Role, functions, duties and powers (including sanctions) (R.17, 23.1 and 23.2, 29 and 30)

3.10.1 Description and analysis

Recommendation 17

604. Recommendation 17 requires countries to ensure that effective, proportionate and dissuasive sanctions, whether criminal, civil or administrative, are available to deal with natural or legal persons that fail to comply with anti-money laundering or terrorist financing requirements. Administrative sanctions, as required by this Recommendation, can be clearly found in three sectoral laws:

1) the Law of Georgia on Activities of Commercial Banks (Annex 18)
2) the Law of Georgia on Non Bank Depository Institutions – Credit Unions (Annex 15) and
3) Regulation on Licensing and Supervising of the Activities of Currency Exchange Bureaus (Annex 27).

The range of sanctions varies from written warnings through monetary penalties to the withdrawal of the licence but does not include suspension of a licence as such.

605. In two other sectoral laws, namely

1) the Law of Georgia on Insurance (Annex 28) and
2) the Law of Georgia on Securities Market (Annex 19),

the only reference is to violations of insurance legislation and the legislation on Securities, without any further elaboration on the modalities of penalties. Whilst referring in general to the Administrative Code, it is however stated in the Law on Securities Market, that if a violation of legislation is committed under aggravated circumstances, criminal responsibility may be established. The same is true for postal organisations. The Georgian authorities advised that Article 220 CCG ("abuse of authority designed to derive profit for a manager") might be used, though, it seems to the evaluators that the conduct involved in this offence is clearly in a different category from a regulatory infringement and it appears unlikely to be apt for AML violations.

606. In general, only administrative (pecuniary) sanctions are available to punish non-compliance with the requirements under the AML/CFT rules. Article 11 (3) of the AML Law stipulates that if a supervisory body finds that a transaction was subject to monitoring and the information has not been forwarded to the FMS, or that guidelines of the relevant normative acts of the FMS have been violated, it shall immediately inform the FMS and apply the appropriate sanction against the infringer. Furthermore, Article 15 section 5 provides: "The Supervisory Bodies shall ensure adoption (issuance) of the regulation on definition and application of sanctions (including financial sanctions) against monitoring entities for violation of this law and normative acts adopted on its basis".

Range of sanctions for the various sectors

a) Commercial Banks

607. The relevant provisions for imposing fines over commercial banks are Article 2 section 8^1 of the Regulation on Determining and Imposing Pecuniary Penalties on Commercial Banks (approved under Decree N. 304 of the President of the NBG; changes introduced under Decree N. 267 of 2 December 2004 of the President of the NBG; Annex 33), and Article 30 of the Law of Georgia on Activities of Commercial Banks (Annex 18). In brief, it can be said, that the sanctions range from GEL 1,000 (for rendering services to a non-identified customer) to GEL 5,000 (for non-reporting of transactions to the FMS), as amended by Decree N. 87 of the President of the NBG of 28 March 2006 (Annex 30). In particular, the following categories are in place:

1. for each act of non-observance of the procedure or term for submission of requested documents on transactions subject to monitoring to the FMS, the amount of fine shall be GEL 1,000;
2. in case of finding non-submission of information on transactions subject to monitoring by the FMS, the amount of the fine shall be GEL 5,000 for each act of violation;
3. In the event of finding cases of rendering banking services to any person without identification, the amount of fine shall be GEL 1,000 for each act of violation;
4. In the event of finding violation of requirements for recording and retention of information (documents) related to monitoring, the amount of fine shall be GEL 1,000 for each act of violation;
5. For each fact of non-observance of the procedure or term for submission of requested documents and additional information on suspicious transactions to the FMS the amount of fine shall be GEL 1,000;
6. For each act of non-submission of requested documents and additional information to the FMS, the amount of fine shall be GEL 5,000.

608. In addition, after imposing fines upon a commercial bank, in case of non-fulfilment of this requirement, the National Bank is authorised also to apply sanctions defined under Article 30 of the Law of Georgia on Activities of Commercial Banks, in particular:

- require the Supervisory Council and Management Directorate to call a special meeting of the bank's shareholders to discuss the violations and to take necessary measures to eliminate them;
- suspend or terminate asset growth, distribution of profits, payment of dividends and bonuses, and salary increases and the reception of deposits;
- in special cases, when the interests of the bank's depositors and other creditors are imperilled, to suspend active operations and to place the bank under temporary administration.

609. In the year 2005, the National Bank of Georgia carried out in 13 banks on-site inspections on AML issues. As a result, one licence was revoked and sanctions with the total amount of GEL 1,494,000 were imposed (the highest sanction imposed was GEL 713,000 and the lowest GEL 1,000).

b) Broker Companies & Securities Registrars

610. Resolution N.38 of 10 February 2004 "On approval of Regulation on Application of Sanctions for violation of the Law of Georgia on Facilitating Prevention of Illicit Income Legalisation" (Annex 31) applies the following sanctions:

- notification to the broker company to eliminate violations;
- suspension of the licence according to the procedure defined under the Securities Legislations;

- Request to the broker company to dismiss the management.

This Decree does not explicitly describe the violations subject to sanctions and does not include financial sanctions.

c) Insurance Companies & Founders of Non-State Pension Schemes:

611. Decree N.53 of 18 November 2004 "On approval of Regulation on Definition and Application of Sanction of Violation of the Law of Georgia on Facilitating Prevention of Illicit Income Legalisation, Normative Acts adopted on its basis and FMS Guidelines by Insurance Companies and Founders of Non-State Pension Scheme" (Annex 32) includes (with a general referral to the Administrative Act) as sanctions for insurance companies and founders of non-state pension schemes (1) warning (letter), (2) financial sanctions, (3) suspension of licence and then (4) revocation of the latter:

- Warnings are given in case of a violation of the requirements defined in the aforementioned Decree; in case of repeated violation(s), administrative sanctions are imposed.
- In case of non fulfilment of obligations defined in the Decree, financial sanctions do not exceed 300 GEL, except in case of non submission of reports subject to monitoring that is 1% of the transaction amount and not less than 300 GEL.
- In case that the sanctions are not paid within two weeks period of time the licence is suspended for a period of three months or till the date when the due sanction fees are paid (within this three months period).
- The withdrawal of the licence is applied a) in case of repeated non-fulfilment of obligations and repeated use of sanctions and b) in case of non-payment of applied sanction fees within three months,.

d) Non Bank Depository Institutions – Credit Unions

612. According to Article 5 of the Regulation on Application of Sanctions against Non-Bank Depository Institutions – Credit Unions (approved under Decree N. 257 of the President of the NBG – Annex 29) and Article 30 of the Law of Georgia on Non-Bank Depository Institutions – Credit Unions (Annex 15) the range of sanctions reaches from GEL 500 (for non-reporting of transactions to the FMS) to GEL 1,000 (for failure to meet the requirements of the Instruction on Implementing Internal Control to Avoid Legalisation of Illicit Income), in particular (Article 30 para 1):

a) send a written warning;
b) issue an instruction for the credit union to suspend or terminate certain activities and, within the timeframe defined by the National Bank, take measures to remedy the violations;
c) impose a penalty on the credit union, in accord with the procedure and at the amount defined by the National Bank;
d) make the Executive Director or a member of the Executive Board pay monetary penalty, if their action had caused financial damage to the credit union;
e) suspend the signature right from the Executive Director or accountant (if any) of the credit union;
f) require the Supervisory Council to summon an unscheduled General Meeting in order to discuss violations, implement measures to remedy these, or renew the composition of management bodies;
g) suspend or limit the asset growth, distribution of earnings, issuance of dividends, increase of salaries and attraction of deposits, issuance of bonuses and other awards;
h) in special cases, when the interests of the credit union members or other creditors are under threat, place the institution under temporary administration;
i) *revoke a licence of a credit union.*

e) Currency Exchange Bureaus

613. Currency Exchange Bureaus are sanctioned with a fine up to GEL 500 for failure to meet the requirements of the normative documents on controlling the prevention of legalisation of illicit income (Article 13 section 6 letter c of the "Regulation on Licensing and Supervising of the Activities of Currency Exchange Bureaus" - Decree N.9 of 11 January 2006).

f) Postal Organisations

614. The evaluators were informed that currently no sanctions are available in case of non-reporting (or any other AML obligation), because the respective normative act is not yet adopted by the Ministry of Economic Development .

Responsibility of the supervisory bodies over the monitoring entities and the power to impose sanctions

615. As regards the responsibility of the supervisory bodies over the monitoring entities and the power to impose sanctions, it is specified in the legislation that the National Bank of Georgia is the authority in charge of imposing sanctions for banks, exchange bureaus and credit unions (Article 11 section 3 of the AML Law, Article 59 section 1 and 4 of the Organic Law on National Bank; Article 30 of the Law of Georgia on Activities of Commercial Banks, Article 27 section 1 and Article 30 of the Law on Non Bank Depository Institutions – Credit Unions).

616. For the insurance sector the sanctioning authority is the Insurance State Supervision Service of Georgia and the National Commission on Securities is the authority for imposing sanctions on securities companies. Postal organisations are under the AML Law subject to supervision and to sanctions imposed by the Ministry of Economic Development of Georgia.

617. The chart beneath shows the supervisory and licensing authorities for all financial institutions:

Financial institutions	Supervisory/Sanctioning authority	Licensing authority
commercial banks	NBG	NBG
Credit unions	NBG [33]	NBG
Insurance companies (including life)	Insurance State Supervision Service of Georgia[34]	Insurance State Supervision Service of Georgia[35]
Securities companies (*brokers, securities registrars*)	National Commission on Securities [36]	National Commission on Securities [37]
Pension Funds	Insurance State Supervision Service of Georgia[38]	Insurance State Supervision Service of Georgia [39]
Stock brokers	See Securities Companies	

[33] Article 27 of the Law of Georgia on Non-Bank Depositary Institutions – Credit Unions and Article 59 of the NBG Organic Law

[34] Paragraph 1 of Article 19 and Article 21 of the Law of Georgia on Insurance

[35] Article 22 of the Law of Georgia on Insurance

[36] Subparagraph „e" , Paragraph 1, Article 49 of the Law on Securities Market

[37] Paragraph 1, Article 22 and Subparagraph „d", Paragraph 1, Article 49 of the Law on Securities Market

[38] Article 30 of the Law on Non-State Pension Insurance and Provision

[39] Article 31 of the Law on Non-State Pension Insurance and Provision

Collective Investment Managers (according to the AML Law they are not monitoring entities)	N/A	N/A
Portfolio Manager Companies (according to the AML Law they are not monitoring entities)	N/A	N/A
Companies issuing credit cards (*commercial banks*)	NBG[40]	NBG
Foreign Exchange offices	NBG[41]	NBG
Money remitters/funds Transfer firms *commercial banks*	NBG NBG[42]	NBG
Postal organisations	Ministry of Economic Development of Georgia[43]	At present there are no licensing requirements.

618. In the years 2004, 2005 and 2006 (until 1 May 2006) several inspections have been carried out:

- Banks were fined in total with GEL 1,494,000;
- exchange bureaus were sanctioned for
  - services rendered without prior identification:
    335 reclamation letters; 29 fines; 35 times the licence validity was suspended;
    4 licences revoked;
  - failure to report:
    11 reclamation letters; 1 fine; 1 licence validity suspended; 1 licence revoked.
- With regard to credit unions, only 1 reclamation letter was sent for failure to report.
- 7 Securities Registrars and 13 Broker Companies were inspected. No AML/CFT violations were revealed.
- 16 Insurance Companies and Non-State Pension Scheme founders were inspected 22 times (hence, some of them twice). 24 written warnings were issued for non-compliance with the requirements of the AML Law (mainly for the deficient identification procedures or delay in submission of the forms).

619. Sanctions have always been imposed against the monitoring entities and not against their directors and senior management, though there are for all sectors – except for the insurance sector and postal organisations - specific norms that allow for this (Article 30 section 2 of the Law of Georgia on Activities of Commercial Banks; Article 13 section 7 and 8 of Decree N.9 of NBG for bureaux de change; for brokers and registrars – Article 3 section 1 letter a and c, Art. 4 section 1 letter a and b of the Decree N. 38 of Security Commission; for credit unions - Art. 6 section 2 of the Decree N. 257 of NBG).

[40] Article 59 of the NBG Organic Law

[41] Article 59 of the NBG Organic Law

[42] Article 59 of the NBG Organic Law

[43] According to the Paragraph „f", Article 4 of the AML Law the supervision of postal organisations in respect of AML/CFT is performed by the Ministry of Economic Development. At present the specific Law regulating this issue does not function (the Law on Communication and Post is abolished on February,6, 2005) and the legislative regulation of postal organisations is carried out by respective international agreements. Mainly: World Postal Union General Regulation, Agreement on Postal Parcels, Agreement on Postal Money Transfers, Charter of World Postal Union and others that were ratified by Georgian Parliament on 23 July 1999. A specific law regulating the activities of postal organisations is in the process of elaboration.

620. The evaluators were informed that the NBG issued a new regulation on administrative sanctions for banks: Decree No. 87 of 28 March 2006 'Regulation on Defining and Imposing Fines over Commercial Banks' amending the above mentioned NBG Decree N. 304 (Annex 33) In brief, the new Decree will reduce the amount of fines for non compliance with the provisions of the AML Law and of the regulation of the FMS.

621. Although considerable efforts are being made by the banking sector to implement new IT tools to enable them to better perform their AML/CFT obligations, as required by the AML Law, the NBG appears also to be reducing the amount of the sanctions for not complying with AML/CFT provisions, which was disappointing.

622. Consequently the regime of sanctions cannot be regarded as fully dissuasive.

Recommendation 23 (23.1 and 23.2)

623. Criterion 23.1 requires that countries should ensure that financial institutions are subject to adequate AML/CFT regulation and supervision and are effectively implementing the FATF standards. Criterion 23.2 requires countries to ensure that a designated competent authority (or authorities) has responsibility for ensuring AML/CFT compliance. According to Article 4 of the AML Law, the relevant supervisory bodies are the NBG, the National Commission on Securities , the Insurance State Supervision Service of Georgia and the Ministry of Economic Development of Georgia.

624. The law very clearly stipulates 1) what transactions are subject to monitoring, 2) obligations of monitoring entities to register information (documentation) on transactions, 3) obligations of monitoring entities to keep records of information (documentation) on transactions, 4) obligations of monitoring entities to implement internal control and 5) obligations to report transactions to the FMS. According to Article 11 of the aforementioned law the supervisory bodies are responsible for overseeing the compliance with the obligations, in accordance with the set rules and procedures.

625. The supervisory bodies are under the obligation to work with each other and to do all that is required to fight ML/FT on both national and international level.

626. The FMS has issued several decrees on approval of the regulations on receiving, systemizing and processing the information by monitoring entities and the forwarding of that information to the FMS (Decrees N. 95, 96, 100, 101, 102 and 104). These regulations can be regarded as model rules, regulating general principles and rules of financial monitoring, conducted for the purpose of preventing money laundering and terrorism financing, and are sanctionable.

627. In the meetings with the respective supervisory bodies, the picture was clear that Georgian supervisors are, in general, well informed about ML and TF risks.

628. The National Commission on Securities comprises 5 members and has a staff of 63. It conducts both on-site and off-site inspections with regard to compliance with laws and regulations. The National Commission on Securities is allowed to issue guidance to the securities sector (Article 49 section 1 letter a of the Law on Securities Market). As already stated above, they work closely together with the FMS in this respect. The National Commission on Securities assesses whether or not the reporting entities' internal procedures are adequate.

629. The Insurance State Supervision Service of Georgia (ISS) comprises a Board and has several departments, among which are Methodology & Normatives, and Licensing and Supervision. The ISS has a staff of 26, of which 7 operate within the Supervisory Department. In 2004 and 2005 the ISS staff has been trained how to conduct AML inspections. The examiners were informed that in 2005 all the insurance companies were inspected, including AML requirements. AML and CFT issues are

addressed in ongoing supervision. The methodology department in this respect is concerned with developing a supervisory approach. The ISS works closely together with the FMS. By-laws have been issued to the sector with regard to sanctions, to be imposed for involvement in money laundering (e.g. Decree N.53 of 18 November 2004, Annex 32).

630. The clients of the insurance companies are mostly legal entities. Products most sold are coverage for legal assistance, health care insurance, pensions and third party liability (the lower risk non-life insurance). Nevertheless, clients have to be identified, ISS will check to what extent adequate procedures are in place. The sources of funds are also checked. On-site inspections take place at least once a year, but if needed, inspections take place on a more frequent basis.

631. The National Bank has developed a methodological manual for the inspection of commercial banks on AML aspects. A separate and adequately authorised department of the National Bank conducts on-site inspections. The NBG staff totals 571 (Supervision Department – 63, including 11 employees in the banking on-site inspection division and 11 in banking off-site inspection division).

632. From the interviews the assessors learned that financial institutions are checking their client base against the UN terrorist lists, on the basis of the information disseminated by the FMS.

Recommendation 29

633. Criterion 29.1 requires that supervisors should have adequate powers to monitor and ensure compliance by financial institutions with requirements to combat money laundering and financing of terrorism.

634. Article 29 of the Law of Georgia on Activities of Commercial Banks (Annex 18) authorises the inspectors of the Central Bank, during their inspections of banks and their subsidiaries to

- examine all books, records, accounts, funds and other documents and
- require that administrators and employees of banks and their affiliates submit to review information on the bank's shareholders, controlling persons and administrators and any information concerning the bank's operations and transactions.

In case these requirements are not fully observed, according to Article 30 of this law, a wide range of sanctions may be applied:

a) issue written warnings;
b) carry out special actions or issue instructions requiring that a bank cease certain current practices and desist from future ones and other violations and take measures to eliminate violations within a specified period.
c) impose fines according to rules and amounts established by the National Bank, but not in excess of a bank's capital resources;
d) to impose civil money penalties in such amounts and pursuant to such procedures as are established by the National Bank if any action of the bank's administrators has caused financial loss to the bank or permitted the violation of regulations and requirements of the National Bank;
e) suspend the signing authority of the bank's administrators and to require the bank's Supervisory Council to dismiss him or her temporarily or permanently;
f) require the Supervisory Council and Management Board to call a special meeting of the bank's shareholders to discuss the violations and to take all necessary measures to eliminate them;
g) suspend or terminate asset growth, distribution of profits, payment of dividends and bonuses, and salary increases and the reception of deposits;

h) in special cases, when the interests of the bank's depositors and other creditors are jeopardized, to suspend active operations and to place the bank in Temporary Administration;

i) to request from the controlling persons of a bank to divest or reduce their control in case of failure to provide financial or other information to the National Bank or in cases where a violation has been discovered. Such divestiture or reduction shall be undertaken in accordance with such terms and conditions the National Bank shall deem necessary in the particular circumstances;

j) to cancel the bank's licence.

635. Article 21 of the Law of Georgia on Insurance empowers the ISS to check the observance of normative and methodological documents by insurers and insurance brokers as well as the veracity of their financial reports. To that end, the ISS is authorised to request and receive reports to exercise control over them. The ISS is also empowered to instruct an insurer, in case of violation of insurance legislation, on elimination of the violation. If the insurer fails to do so, the licence can be suspended until the violation has ended.

636. Article 52 of the Law of Georgia on the Securities Market (Annex 19) authorizes the National Commission on Securities , in carrying out an inspection, and upon producing an official certificate, to visit the premises of a regulated Market Participant or Reporting Company (MP/RC), review all books and records relating to its business, make copies thereof , request the participant to request from any bank where records are maintained, copies of such records, and receive from officials and other employees of such participant, information and oral and written explanations on questions arising in respect to such information. If during an inspection any violation of the securities legislation is found, the National Commission on Securities may (Art 52 para 3):

- require the MP/RC to eliminate such violation and in furtherance thereof, give special orders and directives and oversee compliance;
- prepare a protocol on the facts of the violation and impose administrative sanctions, including penalties under the legislation on securities, on those persons who violate legislation on securities
- conduct an investigation under the established rules in the cases specified by the law.

Failure to comply with a request by the National Commission on Securities during an inspection shall be grounds for suspension or revocation of the licence (Art 52 para 4).

637. Article 27 of the Law of Georgia on Non-Bank Depository Institutions – Credit Unions (Annex 15) stipulates that the NBG shall supervise the activities of credit unions. This implies issuance and revocation of licences, any examination and regulation, imposition of limitations and sanctions, placement under temporary administration or liquidation. It also stipulates that the National Bank shall periodically inspect credit unions, both on-site and off-site, in order to study their financial condition and assess compliance with the applicable law and normative acts of the National Bank. No referral is made to specific powers to compel production in whatever form of any information. It is stated however that in order to remedy violations and deficiencies identified during supervision, the National Bank shall take corrective measures against these institutions, including temporary administration and revocation of the licence. In the aforementioned Regulation on Application of Sanctions against Credit Unions, an explicit referral to the AML-legislation is made. That Regulation, being of a very procedural nature, does not set out any powers with regard to requirements under Recommendation 29. However, Article 59 of the Organic Law on the National Bank, Article 30 of the Law of Georgia on Activities of Commercial Banks and Article 11 section 3 of the AML law appear to provide the NBG with the necessary power to obtain any information from entities under his supervision and regulation.

638. Article 13 of the Regulation on Licensing and Supervising of the Activities of Currency Exchange Bureaus (Annex 27) stipulates that supervision shall encompass *inter alia* periodical examination for the purpose of ensuring conformity of the bureaus' activities with regulations and

normative acts by the Central Bank and the FMS, by means of on-site inspections. The power to examine documents and other materials and to access all information it deems necessary, can be found in Article 59, section 4 of the Organic Law of Georgia on the National Bank..

639. Article 59 of the Organic Law of Georgia on the National Bank (Annex 10) empowers the National Bank, as a supervisor for banks, currency exchange offices and credit unions, to

- supervise all activities of the aforementioned institutions. This includes, among other, full examination and regulation, imposition of restrictions and sanctions, as well as temporary administration and liquidation of banks and credit unions;
- require and obtain any type of document and financial reporting from persons who exercise control over banks and credit unions.

In case of failure to comply with these requirements, the National Bank is empowered to impose sanctions and actions against banks, currency exchange bureaus and credit unions.

640. The FMS Decrees N. 95, 96, 100, 101, 102 and 104 have a final article on responsibilities related to monitoring, instructing the relevant supervisor to supervise compliance with norms and requirements of the Georgia AML-legislation and the relevant Decree. Though these Decrees contain no mention of any specific powers with regard to the production of information and documents by the supervised institutions, Article 59 section 4 letter b) of the NBG Law provides that the NBG is authorized in respect of commercial banks, non-bank depositary institutions and currency exchange offices to examine their accounts, funds, ledgers, documents and other materials and to access all information it deems necessary. Article 52 section 2 of the Law on Securities Market provides that the National Commission on Securities is empowered in the course of their inspections to "visit the premises of a Regulated Securities Market Participant or Issuer, review all books and records relating to its business, make copies thereof, request the participant to request from any bank where records are maintained, copies of such records, and receive from officials and other employees of such participant information and oral and written explanations on questions arising in respect to such information".

641. The assessors are of the opinion that the wide variety of regulatory wording in this respect make it very difficult to ascertain whether or not the supervisors/regulators' powers to compel information and documents also cover specific AML/CFT regulations in all cases.

Recommendation 30

642. The number of supervisors, described earlier, and their familiarity with the AML/CFT issues was broadly satisfactory in relation to the NBG and the ISS. Their representatives all had participated in some training. They appeared to be adequately structured, funded and staffed and provided with sufficient technical resources. NBG has a comprehensive inspection manual covering banks and credit unions. Also the National Commission on Securities and the ISS have inspection manuals. However, the numbers of AML/CFT trained supervisors in the Ministry of Economic Development for the postal organisation appeared in adequate. There appears to be only one person in charge of receiving information from Georgian Post. On Georgian Post's side there is a person in charge of monitoring and retrieving information for the purpose of the FMS.

643. Turning to integrity issues in respect of supervisors, as noted, Article 12 section 1 of the AML Law provides "Financial Monitoring Service of Georgia, monitoring entities and supervisory bodies shall not be authorized to inform parties to the transaction or other persons that the information on transaction has been forwarded to the relevant authority in conformance with obligations defined under this law". Article 20 of the NBG Law contains specific provisions dealing with conflicts of interest for NBG employees, and Article 21 NBG Law with confidentiality. NBG employees are required not to use confidential information for personal gain.

644. The Law on Public Service contains several provisions with regard to the skills and integrity of public servants; e.g. all public servants have to undergo a professional assessment every three years; Article 82 section 1 letter a) – as a consequence, in January 2006 eight employees of NBG were dismissed for failing these assessments and some more were downgraded.

3.10.2 Recommendations and comments

645. The AML Law assigns to the Supervisory Authorities clear roles and sanctioning functions in the AML/CFT field. The supervisory authorities are generally conscious of their duties and functions.

646. However, the overall policy on sanctioning is unclear. The AML Law appears to require that any violation of it and normative acts adopted under it to be sanctionable. Some of the sanctioning Decrees refer to specific obligations and then not always in clear terms. It is thus uncertain in some cases whether some supervisory authorities would be able to sanction for each and every infringement. The amounts of sanctions to be imposed for AML breaches is left to the supervisory authorities to determine. Given the uncertainty over the width of the reporting obligation under SR IV, the capacity to sanction for failure to report in cases of FT is also unclear. The Georgian authorities should consider introducing a consistent, coherent and harmonised legal framework for imposing penalties across all supervisory laws and regulations in AML/CFT issues. In order to do so, much more coordination is required between relevant supervisors on sanctioning policy. It would, in the examiners view, be better if the AML Law clearly listed the obligations which are sanctionable and the penalties to be imposed for each obligation rather than leave this issue to be deduced and determined by the various supervisory authorities. Furthermore, consideration should be given to guidance on the relationship between possible criminal sanctions where they potentially overlap with civil sanctions. It was unclear to the evaluators who would take the decision that a breach was sufficiently egregious to merit criminal prosecution and for what offences.

647. Sanctions have always been imposed against the monitoring entities and not against their directors and senior management, though there are for all sectors – except for the insurance sector and postal organisations - specific norms that allow for this. The legislative and regulatory framework should require Supervisory authorities to impose sanctions not only on the monitoring entities but also on the directors and senior management, in cases where this is not provided for currently.

648. There was a wide range of sanctions generally available for banks and sanctions had been imposed. But it was disturbing that plans were being made to reduce the level of financial sanctions for non compliance with the provisions of the AML Law and of the regulation of the FMS; the banking sector could (mis)interpret this development as a reduced importance of AML / CFT issues. While the examiners appreciate that there is power to *revoke* licences (including cases of AML/CFT breaches), the Georgian authorities may wish to consider adding the possibility to *suspend* licences of banks for serious AML/CFT breaches.

649. To sum it up, the evaluators consider that the sanctions regime is not sufficiently effective, dissuasive and proportionate and is even moving in the wrong direction.

650. A detailed Decree for broker companies should be issued by the competent Supervisory Body, relating to AML/CFT issues. Financial sanctions should be included and sanctionable obligations should be clearly contained within the Decree.

651. As regards the Georgian Postal organisation, the Ministry of Economic Development should issue a Decree to cover AML/CFT sanctioning.

652. The AML Law, the FMS Decrees, the NBG Decrees and the ISS Decrees should clearly sanction not only a failure to comply with AML requirements but also failing to report in respect of transactions likely to be connected with a terrorist or terrorist supporting persons.

653. The supervisory activities in respect of the Georgian Post - that carries out money transfers - is not yet in place and needs to be brought into operation. Adequate numbers of trained supervisors need to be provided in the Ministry of Economic Development.

654. The wide variety of regulatory wording existing in the respect of supervision makes it very difficult to ascertain whether or not all the supervisors'/regulators' powers to compel information and documents also pertain to specific AML/CFT regulations. The Georgian authorities should consider introducing a consistent, coherent and harmonised legal framework for compelling information and documents with regard also to AML/CFT regulations. It was also unclear whether existing powers included sample testing in all cases.

3.10.3 Compliance with Recommendations 17, 23, 29 and 30

	Rating	Summary of factors underlying rating
R.17	**Partially compliant**	The administrative sanctions system does not clearly extend to CFT. Different authorities can apply sanctions for AML infringements, according to the requirements of each sectoral Decree, and there is no clearly harmonised approach across all supervisory authorities as to which infringements should be sanctionable and as to the levels of such sanctions. A Decree is required for brokers companies containing sanctionable obligations. The Ministry of Economic Development needs legal powers to sanction for AML/CFT. Sanctions should apply to Directors and Senior management in appropriate cases. Reducing the level of the sanctions as a consequence of the NBG Decree No.87 for the banks sends the wrong message to all the remaining monitoring entities. The sanctions regime should be much more effective, dissuasive and proportionate.
R.23	**Partially compliant**	The Ministry of Economic Development should commence its AML/CFT supervisory activities in respect of the Georgian Post and supervision of exchange bureaus needs strengthening.
R.29	**Largely compliant**	There should be a general clear power for supervisors to compel documents in all cases.
R.30	**Largely compliant**	The numbers of and training for supervisors in the Ministry of Economic Development for postal organisation was inadequate.

3.11 Financial institutions - market entry and ownership/control (R.23)

3.11.1 Description and analysis

Recommendation 23 (criteria 23.3, 23.5, 23.7)

Commercial banks

655. On the basis of Article 4 of the Law of Georgia on Activities of Commercial Banks (Annex 18) in conjunction with the Regulation on Fit & Proper Criteria for administrators of Commercial banks (Decrees N. 234 and 212 issued by the President of the National Bank on 16 September 2002 and 30 September 2002), a person shall be prohibited from being a bank administrator (manager) or owner of significant share if (among other):

- He or she has engaged in abusive practice when acting as an administrator of a bank or a credit union
- He or she has been declared bankrupt, or has been convicted of an economic crime and his or her previous convictions have not been set aside, or other bans under the current legislation apply to him or her.

656. An owner of a significant share in the banking sector in the context of suitability is considered to be 10 % of the shareholding, although the authority for that is unclear.

657. On the basis of the Law of Georgia on Activities of Commercial Banks (article 14) a person shall not be eligible to be elected to the Supervisory Council if he or she:

- Has by law been deprived of the right to sit on the Supervisory Council of any person
- Has been declared bankrupt.

Credit Unions

658. On the basis of Articles 9 and 12 of the Law on Credit Unions (Annex 15), which concerns conflict of interests, certain persons shall be prohibited to be a member of the Executive Board of the credit union. No provisions however are made for preventing criminals or their associates from holding or being the beneficial owner of a significant or controlling interest or holding a management function.

Broker Companies & Securities Registrars:

659. On the basis of the Law on the Securities Market (Article 24 on Brokerage Companies and Article 25 on Brokers; Annex 19) it is stipulated that:

- None of the members of its managing body should have been deprived of the right under law to be a member of the managing body, if during the past 10 years he or she has been convicted for crimes involving property, business conduct or finance; or during the past five years has been subject to administrative sanction(s) for (a) gross violation(s).
- An applicant for a licence as a broker should during the past 10 years not have been convicted for crimes involving property, business conduct or finance; or during the past five years have not been subject to administrative sanction(s) for (a) gross violation(s) of the legislation or SRO-rules.

660. There are no similar rules for significant shareholders or beneficial owners of significant or controlling interests in brokerage companies.

Insurance Companies & Founders of Non-State Pension Schemes

661. There were no provisions in place. Currently the ISS is drafting a law which provides for Fit & Proper criteria for shareholders, directors and managers of insurance companies and founders of non-state pension schemes.

Currency Exchange Bureaus

662. According to Article 59 sections 1 and 4 of the Organic Law on the National Bank of Georgia, the NBG is empowered to supervise, inspect, license and sanction currency exchange bureaus; Decree N 9 of 11 January 2006 contains the specific provisions concerning the licensing and supervision of their activities: the applicants have to submit to the NBG *inter alia*:

a) copies of the individual identity documents;

b) an extract for the individual entrepreneur from the public register and for the legal entity, seeker of the licence, the copies of his/her founding documents, an extract from the public register, decision of the authorized entity to open the Bureau, contact numbers.

But there are no fit and proper criteria in place. According to Article 5 of Decree N 9, the licence cannot be transferred to a third party.

663. In the law on the Approval of the Regulation and Supervising the Activities of these institutions no provisions regulating market entry and ownership/control can be found. According to the Regulation on Licensing and Supervising of the Activities of Currency Exchange Bureaus the owners of Currency Exchange Bureaus are identified by NBG, but nothing covers fit and proper criteria.

Postal Organisations (with regard to money remittances):

664. No licensing requirements were in place. In practice, currently any person could open a money remittance business. Recommendation 23 requires all such businesses to be licensed and registered and subject to effective systems of monitoring. The assessors were advised that Georgia is in the process of drafting a law that will deal with licensing and regulating operations. The Georgian authorities advised that the Georgian Post is completely owned by the State and is the only postal organisation able to transfer money.

3.11.2 Recommendations and comments

665. There are significant gaps in this area. The Georgian authorities have not yet taken, to the fullest extent, necessary legal and regulatory measures to prevent criminals or their associates from holding or being the beneficial owners of significant or controlling interests or holding management functions in financial institutions.

666. The Georgian authorities should introduce a comprehensive and consistent legal framework on fit and proper criteria that applies to all currently regulated entities (see the chart at Section 3.10) in the same way, which ensures that Recommendation 23 is satisfied. Fit and proper criteria should apply to all administrators and managers and significant shareholders.

667. Some of the terms used in the different laws are vague and/or unclear. It is not certain what is meant by "abusive practices" in the context of bank administrators. The requirements not to have been convicted of criminal offences differ across the financial sector. In the Law on Activities of Commercial Banks the term "economic crime" is used, and in the Law on the Securities Market "crimes involving property, business conduct or finance". It is unclear how wide this various descriptors are and whether they cover all money laundering offences, all offences of fraud etc. Consideration should be given to a harmonised approach to this issue.

668. The Georgian authorities should also consider whether administrators, and managers who have already been appointed fall below the applicable standards.

669. It was noted that an active policy of deregulation was being pursued. It was understood that the limitations on individual bank shareholdings had been removed. In this process, attention should still be focused on the fitness and propriety of persons holding significant shareholdings or those being beneficial owners of significant or controlling interests in financial institutions (who for these purposes can be considered in the same way as administrators or managers, as they can control the policy of the financial institutions). A consistent and appropriate level should be set across the financial sector at which suitability, fitness and propriety is considered in respect of significant interests.

3.11.3 Compliance with Recommendation 23 (Criteria 23.1, 23.3, 23.5, 23.7)

	Rating	Summary of factors underlying rating
R.23	**Partially compliant**	No fit and proper criteria for shareholders, directors and managers of insurance companies and founders of non-State pension schemes. No provisions regulating market entry for currency exchange bureaus. No law licensing and regulating postal operations with regard to money remittances. Different rules apply in respect of assessing the fitness and propriety of persons holding significant interests in financial institutions.

3.12 AML / CFT Guidelines (R.25)

3.12.1 Description and analysis

670. As noted earlier, the FMS issued normative acts determining lists of terrorists and persons supporting terrorism in accordance with relevant UN Resolutions, as well as lists of NCCT jurisdictions based on the FATF-list. These lists are published, regularly updated and disseminated to the monitoring entities.

671. The FMS, at the time of the onsite visit, was in the process of drafting a special feedback form, in close co-operation with the Georgian Bankers Association. This will provide some case-specific feedback to the monitoring entities concerned. Compliance Officers of banks indicated to the examiners that feed back on STRs would be very welcome.

672. The Georgian authorities indicated that the Basel Committee paper "Customer Due Diligence for banks" was sent to commercial banks as a guideline for preparing their own CDD procedures.

673. The supervisory authorities have not issued any guidance of their own concerning concepts such as PEPs, correspondent banking relationships and beneficial owners. The level of understanding with regard to the concept for beneficial owners was low in the financial sector.

674. FMS has issued guidance (recommendations) with regard to off-shore zones and also provided information in this respect on their own web-site. Instructions have been given to the monitoring entities with regard to filling out the STR and CTR reporting forms. The FMS responds to questions from the monitoring entities about the implementation of the AML Law and regulations. However,

there is no guidance on suspicious transactions generally which is sector specific (in relation to both financial institutions and DNFBP other than notaries) and which covers trends and typologies. Such guidance needs to be created.

3.12.2 Recommendations and comments

675. It is important that sector specific guidance to the different parts of the financial sector and DNFBP on suspicious transactions is prepared and promulgated by FMS together with the supervisory authorities. It is important that the guidance issued is consistent across all parts of the financial sector and DNFBP. In the view of this, in the preparation of guidance close co-operation is required between the FMS, supervisory authorities, financial sector and the representative organisations.

676. The FMS should proceed with its plans to provide adequate and appropriate feedback for financial institutions (and DNFBP) required to report suspicious transactions, having regard to the FATF Best Practices Guidelines on Providing Feedback to Reporting Financial Institutions and Other Persons.

3.12.3 Compliance with Recommendation 25 (criteria 25.1 and 25.2 financial institutions)

	Rating	Summary of factors underlying rating
R.25	**Partially compliant**	Sector specific guidance on suspicious transactions needs to be provided and adequate and appropriate feedback needs to be given to financial institutions (and DNFBP) required to make suspicious transaction reports in line with the FATF Best Practices Guidelines.

3.13 Ongoing supervision and monitoring (R.23 [Criteria 23.4, 23.6 and 23.7] and R. 32)

3.13.1 Description and analysis

677. As already noted, in the fight against ML/TF the onus is on the FMS, in close co-operation with the supervisors. The Decrees N. 95, 96, 100, 101, 102 and 104 (Annexes 17, 22, 21, 23, 26, 25) stipulate:

1. what transactions are subject to monitoring,
2. the obligations of the monitoring entity with respect to the implementation of internal control,
3. the functions and obligations of the employee in charge of monitoring,
4. the obligations of the monitoring entity with respect to identification and registration of identification details,
5. the obligations of the monitoring entity to record information (documents) on transactions subject to monitoring,
6. the obligations of the monitoring entity to keep information related to the monitoring process,
7. the obligations to present reporting forms on transactions subject to monitoring and
8. how the information from the monitoring entities shall be entered into the FMS database.

678. All Decrees have a final article on responsibilities related to monitoring, instructing the relevant supervisor to supervise compliance with norms and requirements of the Georgian AML-legislation and the relevant Decree. It is also stipulated that if there is a supposition that any party to a transaction is related to terrorists or persons supporting terrorism, the transaction shall be subject to monitoring.

679. The Decrees are Model Rules for each financial sector to develop internal procedures/regulations for AML/CFT.

680. Supervision of financial institutions is the responsibility of:

1. The National Commission on Securities, which conducts both on-site and off-site inspections with regard to compliance with laws and regulations. It is not allowed to issue guidance to the securities sector. As already stated above, the Commission works closely together with the FMS in this respect and assesses whether or not the reporting entities' internal procedures are adequate.

2. The Ministry of Economic Development (for the postal organisations) does not conduct on-site inspections. There are no requirements with regard to supervision and/or inspection. There appears to be one person in charge of receiving information of Georgian Post.

3. The Insurance State Supervision Service of Georgia (ISS) addresses AML and CFT issues in ongoing supervision. The methodology department in this respect is concerned with developing a supervisory approach. The ISS works closely together with the FMS. Bylaws have been issued to the sector with regard to sanctions, to be imposed for involvement in ML. The ISS will check to what extent adequate procedures are in place. On-site inspections take place at least once a year, but if needed, inspections take place on a more frequent basis.

4. The National Bank of Georgia has developed a methodological manual for the inspection of commercial banks on ML-aspects. A separate and adequately authorised department of the National Bank conducts on-site inspections. The assessors were not advised of specialized manuals and departments for the inspection of credit unions and exchange offices.

681. On the basis of Article 11 para 3 of the AML-law, all supervisors shall immediately inform the FMS if they reveal that a transaction, that is subject to monitoring, has not been reported to the FMS. This also applies in the case where guidelines or normative acts of the FMS have been violated.

682. In 2005 and until 1 May 2006 (16 months in total) the following inspections took place:

- 15 commercial banks were inspected. Against 11 banks, fines were imposed. It is unknown if all these fines pertain to AML/CFT-violations.
- 477 exchange bureaus were inspected. 277 AML-violations were revealed during these inspections.
- 42 credit unions were inspected. 1 AML-violation was revealed.
- 7 securities registrars and 13 broker companies were inspected. No AML-violations were revealed.
- 22 supervisory visits were conducted in insurance companies and non-state pension scheme founders (some have been visited twice). In 19 cases, non-compliance with the requirements of the AML-law was revealed (mainly deficient identification procedures or delay in reporting transactions).

683. The assessors note that postal organisations (money remittances) do not conduct on-site inspections.

Recommendation 32

684. Reasonably comprehensive data on on-site inspections and sanctions relating to or including AML/CFT issues were obtained from the National Bank, though the remaining Supervisory Authorities should strengthen their statistical framework. For example, the examiners were informed of inspections executed by other supervisory bodies, but no official hard copies of these were provided to the evaluators. More comprehensive data should be maintained on which particular AML/CFT controls were undertaken and which of these were the subject of sanctioning.

3.13.2 Recommendations and comments

685. Financial institutions that are subject to the core principles can be considered as under basically adequate regulation and ongoing supervision and are in the process of implementing FATF Recommendations. Onsite inspection visits appeared to be regularly taking place. The number of AML/CFT obligations that were specifically checked in inspections was not always clear. Onsite visits appeared to cover inspections of books and records and reviews of policies and procedures. AML/CFT supervision should be intensified in respect of exchange bureaus. When the law is amended, attention needs to be focused in AML/CFT inspections on the identification of beneficial owners. The supervisors indicated, that they would assess whether the financial institutions were checking their client base against the UN lists.

686. A programme of inspections covering AML/CFT issues should be commenced by the Ministry of Economic Development for postal organisations.

687. Statistical information was more readily available from the NBG. However, generally, the statistics provided did not detail the full nature of violations detected and it is difficult to say how many relate to violations in the AML Law, other than customer identification. Better statistical information needs to be kept by all supervisory bodies, detailing the nature of AML/CFT violations detected and penalties imposed. The statistics of onsite visits need reviewing collectively and on a coordinated basis, so that the Georgian authorities have a clearer picture of the level of AML/CFT compliance across the whole financial sector.

3.13.3 Compliance with Recommendations 23 (Criteria 23.4, 23.6 and 23.7) and 32

	Rating	Summary of factors underlying rating
R.23	**Partially compliant**	The AML/CFT supervision and regulation in financial institutions that are subject to the core principles appear adequate; a programme of inspections needs to be implemented for the postal services.
R.32	**Partially compliant**	More detailed statistical information needs to be kept on the results of supervisory inspections and the results should be reviewed collectively.

3.14 Money or value transfer services (SR.VI)

3.14.1 Description and analysis

688. The evaluators were informed that banks and the Georgian Postal Organisation are the unique entities which perform money transfers.

689. Banks perform wire transfers via banking channels, including the SWIFT-system and service-remittance (e.g. Western Union).

690. Postal organisations carry out money remittance both domestically and internationally. Domestically this is done via the Postal service's network of branches. No agents are used by the Georgian Postal Organisation for money transfer services. Internationally money transfer services are conducted on the basis of MOUs between Georgia Postal Organisation and other services under relevant international postal conventions. According to the AML Law and FMS Decree N.95 and 102, bank employees and employees of the postal organisations handling such transfers conduct the customer identification and CDD-procedures as they are generally applied in Georgia and therefore the deficiencies identified in Recommendations 4-11, 13-15 and 21-23 and SR.VII are relevant in the context of SR.VI.

691. As also noted under the AML Law and FMS Decree N. 102, the Ministry of Economic Development is responsible for the supervision of the postal organisations. Information provided by them indicates that all branches of Georgian Postal Organisation conduct money remittance services both domestically and internationally.

692. There is one department in the Ministry of Economic Development, which is responsible for Georgian Post generally. In practice, there has been no AML / CFT supervision by way of onsite/offsite inspection of Georgian Post carried out. On Georgian Post's side there is one compliance officer, in charge of monitoring and retrieving information for the purpose of the FMS. That person is also responsible for preparing internal guidelines.

693. Sanctions as provided for in FATF Recommendation 17 are not invoked as there is no sanctioning regime for AML/CFT issues in place in respect of postal organisations. A sanctioning Decree was being drafted at the time of the on-site visit.

694. While money transfer business was in the past subject to licensing, this requirement was abolished on 1 January 2006. Currently there is no licensing or registration system for natural or legal persons that wish to perform money or value transfer (MVT) services. Given that the abolition had only recently taken place, the number of operators up to the end of 2005 would have been known to the Ministry. In practice now, any person can set up a money or value transfer service, and the numbers of such operations will be unknown to the Georgian authorities.

3.14.2 Recommendations and comments

695. The abolition of the licensing regime for MVT service operators is a step backwards from the FATF standards, which require that one or more competent authorities should register or license natural or legal persons that perform these services. The Georgian authorities should re-introduce a licensing or registration system for such persons.

696. The engagement of the supervision for the Georgian Postal Organisation with AML/CFT issues was just beginning. There should be a system in place by them to ensure that the FATF Recommendations are being applied by the Georgian Postal Organisation, and sanctioning should be possible for breaches of AML/CFT requirements. The deficiencies identified in this report in CDD etc. generally mean that MVT service operators are, in any event, not subject to adequate CDD (and other preventive) requirements, in particular the general non-compliance of Georgia with SR.VII, in respect of wire transfers, impacts adversely on the implementation of SR.VI.

697. The Georgian authorities were unaware of any informal alternative remittance systems that might be operational in Georgia, though given the current lack of controls at the borders for AML/CFT purposes this conclusion should be reviewed with the Customs when they are properly fulfilling their obligations under the AML Law.

3.14.3 Compliance with Special Recommendation VI

	Rating	Summary of factors underlying rating
SR.VI	**Partially compliant**	• Value transfer business not licensed/registered. • No on-site or off-site controls have been conducted at postal organisations.

4 PREVENTIVE MEASURES – DESIGNATED NON FINANCIAL BUSINESSES AND PROFESSIONS

Generally

698. According to Article 3 of the AML Law, monitoring entities - apart from financial institutions (including postal organisations) and customs authorities - are:

- entities organizing lotteries and other commercial games (including casinos);
- entities engaged in activities related to precious metals, precious stones and products thereof, as well as antiques;
- entities engaged in extension of grants and charity assistance;
- notaries.

699. Real estate agents, lawyers, accountants are not monitoring entities as referred to in the AML Law. Neither are trust and company service providers, which are apparently non-existent in Georgia. As a result of not being monitoring entities under the AML Law, no CDD requirements apply.

700. As a result of being monitoring entities, the general requirements of the AML Law are applicable to casinos, dealers in precious metals, dealers in precious stones and notaries, including customer identification and verification (so far as it goes), record keeping and the obligation to reveal transactions subject to monitoring (i.e. transactions above 30,000 GEL and suspicious transactions – including transactions of which the person's legal address or place of residence is located in an NCCT and the transaction amount is transferred to or from such area).

701. Broadly, the main deficiencies that apply in the implementation of the AML/CFT preventive measures applicable to financial institutions regarding Recommendations 5 to 10 and other preventive Recommendations described in Section 3 above, apply also to DNFBP, since the core obligations for both DNFBP and financial institutions are based on the same general AML/CFT regime.

4.1 Customer due diligence and record-keeping (R.12)

(Applying R.5 to R.10)

4.1.1 Description and analysis

702. The CDD requirements, so far as they go, applicable to casinos, dealers in precious metals, dealers in precious stones and notaries are more or less the same as those applicable to financial institutions (see the Sections 3.2, 3.3, 3.5 and 3.6 above). These requirements are established by the AML Law as well as by several Regulations (Decrees) issued by the FMS. No requirements are in place regarding real estate agents, lawyers and accountants.

703. The specific requirements and the implementation of those requirements differ as follows:

Casinos

704. Under the FATF standards, CDD in casinos (including internet casinos) is required when customers engage in transactions above EUR 3,000. Under Article 3 (5) of the 2nd EU-Directive, identification should occur, when buying, purchasing or selling chips with a value of EUR 1,000 or more, though casinos subject to state supervision shall be deemed to have complied if they identify customers immediately on entry. Article 3 (c) of the Law on Organizing Lotteries, Gambling and Other Prize-winning Games (Annex 34) defines a casino as "a special gambling institution where

prize money is raffled for by means of a roulette wheel, cards, gambling tables, dice, gambling machines and other devices". This definition does not appear to include internet casinos.

705. On 28 July 2004 the FMS issued the "Regulation on Rule and Terms of Receiving, Systemizing and Processing the Information by Casinos and Forwarding to the Financial Monitoring Service of Georgia" (approved under Decree N. 94; Annex 24). According to this regulation, casinos are obliged to identify all persons upon entering the casino and all persons involved in transactions subject to monitoring, i.e. transactions or a series of transactions exceeding GEL 30,000 (Article 5 para 1 - 3 of this regulation). Additionally the examiners understood that Article 5 (3) of this FMS Decree is interpreted to mean that identification also takes place when a client buys or changes chips regardless of any threshold. The examiners were also advised that video recording takes place in casinos. The following information has to be obtained in the identification process using a Georgian ID or a passport: first name, last name, citizenship, date of birth, permanent (registered) place of residence and number of ID/passport and personal number of ID/passport (Article 5 para 5 - 7). It appears therefore that the CDD requirements in casinos under the FATF standards are broadly satisfied. Casinos are obliged to record transaction data regarding all transactions arising from amounts won or several amounts won received by a person exceeding GEL 30,000, all transactions comprising of an amount paid by the person for participation in a game in the casino or withdrawals (cashing chips in) exceeding GEL 30,000 and all (even attempted) suspicious transactions regardless of the threshold (Article 5 para 8 in conjunction with Article 3 of the regulation), being transactions subject to monitoring. Based on Article 4 of the Regulation, casinos shall exercise internal control and develop guidelines regarding identification of all clients of the casino.

706. Casinos are obliged to keep the obtained/recorded information for five years (Article 5 para 9 of the Regulation).

707. Article 3 para 3 of the Regulation obliges casinos to analyse information on each transaction and persons involved therein with the aim of revealing transactions subject to monitoring, including transactions above 30,000 GEL and suspicious transactions. Based on Article 4 of the Regulation, casinos shall exercise internal control and develop guidelines regarding analysing the information obtained through identification process and revealing transactions subject to monitoring, documenting, systemizing and filing such information (see Section 4.2). Considering that internal controls (see Section 4.2) and adequate supervision (see Section 4.3) is lacking and so far transaction reports have not been received (see Section 4.2), the effectiveness of the requirements and the effectiveness of the implementation of the requirements would appear to be insufficient.

Dealers in precious metals and dealers in precious stones

708. The general requirements of the AML Law are applicable. No specific normative acts are issued nor are other more specific CDD requirements. Considering that internal controls (see Section 4.2) and arrangements for monitoring compliance are not in place (see Section 4.3), and so far transaction reports have not been received (see Section 4.2), the effectiveness of the implementation of the requirements has also to be questioned.

Notaries

709. On 27 July 2004 the FMS issued the Regulation on Receiving, Systemizing and Processing the Information by Notaries and Forwarding to the Financial Monitoring Service of Georgia (approved under Decree N. 93; Annex 35). According to this Regulation, notaries are obliged to identify all clients and persons wishing to establish business relationships with a notary, as well as their representatives, agents and third persons, in whose favour the transaction is being concluded (has been concluded) (Article 5 para 1 of the Regulation). Notaries are forbidden to certify (confirm) a transaction (document), carry out any of notarial activities, render services to the client or establish a business relationship with him without preliminary identification of this person (Article 5 para 3).

710. The following information on all persons taking part in the transaction has to be obtained in the identification process:

2. in case of a physical person: first name, last name, citizenship, date of birth, permanent (registered) place of residence, number of ID/passport and personal number of ID/passport and (if an individual entrepreneur) registration data,
3. in case of a legal entity: full name, business activity, legal address (and of head office), registration data, identification number of tax payer and identification number of persons authorised for management and representation and
4. in case of an organisational formation (non-legal entity): full name, legal address, legal act, based on which it has been established (or functioning), identification number of tax payer and identification number of persons authorised for management and representation (Article 5 section 6, of the Regulation).

711. Also, if available, the following information has to be documented:

1. in case of a physical person: patronymic, place of birth, ID/passport issuing authority and date of issuance, temporary (real) place of residence (in Georgia and/or abroad) if different from registered place of residence, occupation, main business activity and position held, bank account details and tel/fax/e-mail and
2. in case of a legal entity or (other) organisational formation: identification details on significant shareholders (more than 20%), date of appointing persons authorised for management and representation and bank account details (Article 5 para 8 of the Regulation).

712. The following documents are required to confirm the client's identity:

1. in case of a physical person: a Georgian ID, a (Georgian or foreign) passport or a comparable Georgian official document (if an individual entrepreneur) document confirming the registration and
2. in case of a legal entity or (other) organisational formation: a court resolution on registration or a record from a business register (documents issued by relevant foreign authorities shall be legalized in compliance with the procedure set under the Georgian legislation (Article 5 para 7 of the Regulation).

713. Notaries are obliged to *record* transaction data regarding all (concluded or implemented) transactions or series of transactions of which the amount exceeds GEL 30,000 and all (attempted, concluded or implemented) suspicious transactions regardless of the threshold (Article 6 in conjunction with Article 3 of the Regulation and Article 5 of the AML Law), being transactions subject to monitoring.

714. Notaries are obliged to keep the obtained/recorded information (in original form or, where impracticable, a copy of the information confirmed by the notary himself) for five years (Article 7 of the Regulation). The examiners were advised that transaction data of all transactions (and not only of the afore-mentioned transactions) have to be recorded. At least Article 52 of the Law on Notary Service (Annex 36) states that all notary acts shall be registered with the Notary Register.

715. Based on Decree N. 93, notaries have the obligation to reveal transactions subject to monitoring, including transactions above 30,000 GEL and suspicious transactions in order to act upon them (abandon the transaction and report it to the FMS (see also Section 4.2). The FMS has provided notaries guidelines/feedback on how to detect a transaction as suspicious ('Grounds for considering transaction and persons involved therein as suspicious for Notaries'; Annex 37). In short they cover the situations where a client receives several short-term loans from different persons, where the value indicated by participants does not comply with market value, and where the real selling price of real estate is different from reported selling price.

Real estate agents

716. For real estate agents no requirements are in place. The Georgian authorities pointed out that according to Georgian legislation, alienation (amortization) of real estate should be notarised and that information on all deals regarding any form of alienation of real estate comes to FMS from notaries (if the amount is over 30,000 GEL or the deal is suspicious).

Lawyers

717. Lawyers are not subject to CDD requirements under the AML Law or other Regulation, however the examiners understood, that the Georgian Bar Association has endorsed a Code of Ethics in April 2006, containing a disciplinary charter. The predominant norm is to act in the client's best interest (see also Article 6 of the Law on Advocates), unless this leads to a violation of the law (analogous to the Criminal Code that apparently states that concealing a grave crime, like terrorism, is a criminal offence). According to Article 7 of the Law on Advocates (Annex 38), as well as the Code of Conduct a strict client-lawyer privilege prevails. As a result of that, in practice a lawyer will abandon the transaction, but without disclosing it to the relevant authorities.

Auditors and accountants

718. As far as the examiners understood, the Georgian auditors are taking international accounting standards into account. Auditors are regulated by the Law on Auditing Activities. A licence is no longer necessary. In May 2006 approximately 700 auditors (around 500 natural persons and 200 legal persons) were operating in Georgia and are members of the Auditors Association. The number of accountants is thought to be around 100,000, though only 2,100 are officially registered as members of the Accountants Federation. Accountants are not monitoring entities and not covered by AML/CFT obligations as required by FATF Recommendation 12 in respect of enumerated activities and under the European Union Directives. Auditors are not monitoring entities and are not covered by AML/CFT obligations as required under the European Union Directives.

Trust and company service providers

719. As trust and company service providers are apparently non-existent in Georgia, no special requirements are in place.

720. Regarding DNFBP in general (meaning casinos, dealers in precious metals, dealers in precious stones and notaries), the examiners understood, that non-face to face identification is not allowed nor the use of intermediaries applies. In all cases the identification process has to be executed by the monitoring entity itself.

4.1.2 Recommendations and comments

721. No CDD requirements are in place regarding real estate agents, trust and company service providers, lawyers and accountants, although the latter two are preparing and carrying out transactions for their clients in relation to the activities mentioned under Recommendation 12 (d). Trust and company service providers do not exist at present but may do in the future. Customer due diligence and record keeping requirements set out in Recommendations 5, 6, and 8 to 11 should apply to real estate agents, lawyers and accountants in the situations described in Recommendation 12.

722. A clear provision is required that all necessary records on transactions (whether carried out or terminated) shall be maintained. The existing one is limited (except for notaries) to (attempted,

concluded or implemented) suspicious transactions and all (concluded or implemented) transactions exceeding 30,000 GEL. The same difficulties as described under Section 3.5 with regard to reliance on the Tax Code as a complete authority for all record keeping applies similarly to DNFBP.

723. As noted earlier, the CDD requirements need to be further developed. Reference has been made to the need for financial institutions to be required to obtain information on the purpose and intended nature of the business relationship and to conduct enhanced due diligence for higher risk categories of customer. It is noted, that there is reference, in the context of the definition of a suspicious transaction in the AML Law to the need for transactions to be identified which are inconsistent with ordinary business activity, but the requirements to conduct required CDD measures to obtain such information are not clearly provided for in the law.

724. An obligation is lacking, to determine whether a customer is acting on behalf of another person as well as the requirement to identify the other person. No explicit, comprehensive obligation to identify and verify the beneficial owner is in place (as well as a comprehensive definition of the latter), besides, as mentioned, the more up to date requirements regarding notaries.

725. The effectiveness of (the implementation of) the CDD requirements, as far as they go and where in place, is insufficient or at least unknown (particularly regarding casinos and dealers in precious metals and stones). In respect of notaries, the implementation and supervision of existing standards is slightly more advanced.

726. Having adopted procedures for the identification of all customers on entry into casinos, being state supervised, Georgia is in compliance with the provisions of Article 3 (6) of the Second EU AML Council Directive. However, it is unclear whether the FMS-Decree N. 94 extends to internet casinos. The Georgian authorities should ensure that the standards set out in the FMS Decree apply to any internet casino operating which has a sufficient nexus or connection with the country and this should be clarified.

4.1.3 Compliance with Recommendation 12

	Rating	Summary of factors underlying rating
R.12	**Non compliant**	• No CDD requirements regarding real estate agents, lawyers, accountants and trust and company service providers; • Existing CDD requirements have the same deficiencies as applied to financial institutions generally and the lack of inspections covering this issue raises questions about the effectiveness of implementation of existing standards.

4.2 Monitoring of transactions and other issues (R. 16)

(Applying R.13 - 15 and 21)

4.2.1 Description and analysis

727. As mentioned above, the AML Law prescribes casinos, dealers in precious metals, dealers in precious stones and notaries as monitoring entities (see Section 4.1). Requirements regarding the reporting of suspicious transactions (transactions above 30,000 GEL and [attempted] suspicious transactions) and internal controls applicable to these entities, are more or less the same as those

applicable to financial institutions. These requirements are established by the AML Law, as well as by several Regulations issued by the FMS (the same as mentioned under Section 4.1). Again, no requirements are in place regarding real estate agents, lawyers and accountants.

728. The same problem arises in respect of these DNFBP making suspicious transaction reports in relation to tax or customs offences as set out at 3.7.1, given the clear terms of the definition of illicit income in the AML Law. The safe harbour provisions apply to these DNFBP monitoring entities in the same way as they apply to financial institutions. Monitoring entities, their management and employees shall not be held accountable for failure to observe the confidentiality of information (or under an agreement), as well as for protection or referral of such information, except for commitment of a criminal offence (Article 12 para 3 of the AML Law).

729. In general, monitoring entities are obliged to ensure the implementation of internal control and internal regulations to prevent money laundering and financing of terrorism and take adequate measures for their enforcement (Article 8 of the AML Law).

730. The specific requirements and the implementation of those differ as follows:

Casinos

731. Article 6 para 1 of the "Regulation on Approving the Regulation on Rule and Terms of Receiving, Systemizing and Processing the Information by Casinos and Forwarding to the Financial Monitoring Service of Georgia" (Approved under Decree N. 94 of the Head of the FMS on 28 July 2004; Annex 24; see Section 4.1) obliges casinos to submit written and electronic notices regarding transactions subject to monitoring to the FMS. The FMS has provided casinos with a reporting form template. The report shall be forwarded no later than within three working days from the moment of conclusion or implementation of the transaction or from the moment the supposition arose (or if practically impossible as an exception through existing communication means and then within three days after that moment in the regular way). If persons, who are on the list of terrorists or persons supporting terrorism, are involved in a transaction, casinos have to notify the FMS immediately and forward the available documents (Article 6 sections 2 and 3 of the Regulation). The monitoring process shall be conducted in a way that the casino's clients, persons involved in transactions and other relevant persons shall not be aware that their activities are subject to monitoring (Article 4 section 6 of the Regulation). Casinos shall be obligated to ensure confidentiality on information obtained to the monitoring process, as well as of information on completion of special reporting forms related to transactions subject to monitoring and submission to the FMS (Article 4 section 7 of the Regulation). Up till the end of 2005, casinos have not forwarded any transaction reports to the FMS.

732. Article 4 of the Regulation in conjunction with Article 8 of the AML Law provides obligations with respect to implementation of internal control regarding casinos. Implementation of internal control shall include:

- identification of all clients of the casino;
- analysing the information obtained through the identification process and revealing transactions subject to monitoring, documenting, systemizing and filing such information;
- submission of the information on transactions subject to monitoring to the FMS;
- implementation of training programmes of the casino (Article 4 section 2 of the Regulation).

733. Internal regulations shall define:

- terms and procedures for identification of casino clients;
- functions, authority and responsibility of the employee/unit in charge of monitoring;
- person who makes decision on considering a transaction as suspicious and/or aimed at partition of the transaction and forwarding special reporting form to the FMS;

- procedure for recording, systemizing, and filing information related to the monitoring process;
- procedure for submission of special reporting forms and other materials to the FMS;
- functions, authority and responsibility related to the monitoring process of other employees/units of the casino (as well as procedures for submission of information on transactions subject to monitoring to employee in charge of monitoring) (Article 4 section 4 of the Regulation).

In the casinos cameras are in place to monitor activities, including the activities at the cash-desks.

734. Considering that adequate supervision is lacking (see Section 4.3) and so far no transactions reports have been forwarded to the FMS, the effectiveness of the requirements and the effectiveness of the implementation of the requirements are insufficient.

Dealers in precious metals and dealers in precious stones

735. The general requirements of the AML Law are applicable. No specific normative acts are issued, nor are there other more specific reporting requirements. The FMS has provided dealers in precious metals and dealers in precious stones with a reporting form template. Up until the end of 2005 no transaction reports have been forwarded to the FMS by dealers in precious metals or dealers in precious stones. Considering this, as well as the lack of AML/CFT monitoring (see Section 4.3), the effectiveness of the requirements and the effectiveness of the implementation of the requirements need further consideration by the Georgian authorities.

Notaries

736. Article 8 para 1-3 of the Decree N. 93 on Approving the Regulation on Receiving, Systemizing and Processing the Information by Notaries and Forwarding to the Financial Monitoring Service of Georgia (Annex 35; see Section 4.1) obliges notaries to submit written and electronic notices regarding transactions subject to monitoring to the FMS. In this regard notaries are exempt from confidentiality (Article 9 para. 5 Law on Notary Service; Annex 36). The FMS has provided notaries with a reporting form template. The report shall be forwarded no later then within three working days from the moment of conclusion of the transaction or from the moment the supposition arose (or if practically impossible through existing communication means within the next working day); if in the transaction persons, being on the list of terrorists, or persons supporting terrorism are involved, notaries have to immediately notify the FMS and forward the available documents (Article 8 para. 4 of the Regulation). The notary is obliged to strictly observe confidentiality of form completion, submission to the FMS and the related information (Article 8 para. 17 of the Regulation as well as Article 12 section 1 of the AML Law). As mentioned above, the FMS has provided notaries with guidelines/feedback on how to define a suspicious transaction (see Section 4.1). In 2004 and 2005, notaries forwarded 621 and 2,714 transaction reports respectively to the FMS (of which 11 and 4 respectively involved suspicious transactions). These reports resulted in two cases being forwarded to the General Prosecutor's office. The investigations are ongoing. In one case property was seized.

737. Article 4 of the Regulation states that notaries shall exercise internal control in accordance with the normative acts issued by the Ministry of Justice (the designated supervisor, see Section 4.3) on the basis of Article 8 section 7 of the AML Law. So far, the Ministry of Justice has not itself issued a specific normative act in relation to this subject, though, as seen, notaries are making reports. The examiners were advised by the notaries with whom the team met, that, though they understand the need to make reports, their internal control mechanisms need substantially updating to support this obligation. Notaries are still not equipped to keep data electronically.

Real estate agents, lawyers and accountants

738. No requirements are in place for real estate agents, lawyers and accountants . Monitoring on deals related to real estate is performed by notaries, since according to the Georgian legislation all such deals have to be certified by a notary public. Hence the information on deals on real estate is obtained by FMS through notaries.

European Union Directive

739. Auditors, external accountants and tax advisors (Article 2a section 3 of the Directive) are not referred to as monitoring entities under the AML Law and therefore no AML requirements are applicable. Dealers in precious metals and stones also (and only) dealers in antiquities are referred to as monitoring entities under the AML Law. The general requirements of the AML Law are applicable. No specific normative acts are issued in relation to them. Nor are there other more specific CDD requirements. Considering that internal controls and adequate supervision are lacking (there is no supervision at all), and so far transaction reports have not been received, the effectiveness of implementation of the requirements appear insufficient.

740. According to Article 7 of the Second EU AML Council Directive, Member States shall ensure that financial institutions refrain from carrying out transactions which they know or suspect to be related to money laundering until they have apprised the competent authorities. In addition, these authorities should have the power to stop the execution of a transaction that has been brought to their attention by an obliged person who has reason to suspect that such transaction could be related to money laundering. According to various specific AML Regulations, monitoring entities shall not suspend implementation of the transaction except for the following cases: (1) client can not be identified; (2) any party involved in the transaction is on the list of terrorists or persons supporting terrorism; (3) other cases provided by Georgian legislation (non at present). According to Article 10 section 4 (f) of the AML Law, the FMS can apply to the court for the purpose of suspending a transaction if there is the grounded supposition that the property (transaction amount) will be used for financing of terrorism. But no such provision exists regarding transaction suspected to be related to money laundering.

741. Article 8 paragraph 1 of the Second EU AML Council Directive prohibits institutions and persons subject to the obligations under the Directive and their directors and employees from disclosing to the person concerned or to third parties either that an STR or information has been transmitted to the authorities or that a money laundering investigation is being carried out. Furthermore Article 8 paragraph 2 provides an option for Member States not to apply this prohibition (tipping off) to notaries, independent legal professions, auditors, accountants and tax advisors. According to the AML Law and various regulations, monitoring entities (including notaries) are obliged to ensure confidentiality on information obtained through the monitoring process, as well as of information on completion of special reporting forms related to transactions subject to monitoring and submission to the FMS.

742. Article 10 of the Second EU AML Council Directive imposes an obligation on supervisory authorities to inform the authorities responsible for combating money laundering if, in the course of their inspections carried out in the institutions or persons subject to the Directive, or in any other way, such supervisory authorities discover facts that could constitute evidence of money laundering. The Directive further requires the extension of this obligation to supervisory bodies that oversee the stock, foreign exchange and financial derivatives markets. In providing for the regulation and supervision of financial institutions and DNFBP in Recommendation 23 and in providing for institutional arrangements (Recommendations 26 to 32) the FATF 40 Recommendations do not provide for an obligation on supervisory authorities to report findings of suspicious activities in the course of their supervisory examinations. According to Article 11 section 3 of the AML Law, supervisory bodies have to inform immediately the FMS if they reveal a transaction subject to monitoring (including

transactions suspected to be related to money laundering) that has not been forwarded to the FMS. However, this provision is limited to transactions that have not been forwarded already and it does not include other facts that could constitute evidence of money laundering.

4.2.2 Recommendations and comments

743. No reporting requirements are in place regarding real estate agents, lawyers and accountants. Requirements under Recommendation 13 to 15 and 21 should apply to real estate agents, lawyers and accountants subject to the qualifications in Recommendation 16.

744. DNFBP hardly submit STRs to the FMS (only 17 from notaries). Thus, the evaluators advise that more outreach to the DNFBP generally should be undertaken and more guidance provided by the FMS and supervisory bodies on indicators of suspiciousness.

745. The effectiveness of (the implementation of) the reporting requirements regarding casinos and dealers in precious metals and dealers in precious stones has to be seriously questioned. Although the number of casinos has reduced from 39 (as of 1 January 2006; before entering into force of the new Law on Gambling and introducing an annual permit fee) to 2, these institutions are a clear and present money laundering danger. Even if customer identification takes place, no supervision occurs. Urgent attention to this should be given.

746. The AML Law is not fully in compliance with Article 2a of the Second EU AML Council Directive, although the application of the requirements to dealers in antiquities is considered positive (notwithstanding the questionable effectiveness of the application of the requirement). To comply with Article 2a of the Second EU AML Council Directive, Georgian Authorities should add auditors, external accountants and tax advisors and - though not relevant at present - company service providers to the list of monitoring entities.

747. Georgian Law contains no provision that the FMS could apply to the court for the purpose of suspending a transaction if there is the grounded supposition that the transaction is suspected to be related to money laundering which is not in compliance with Article 7 of the Second EU AML Council Directive. To comply with Article 7 of the Second EU AML Council Directive the AML Law Georgian Authorities may wish to consider to ensure in the AML Law and/or Regulations that monitoring entities shall refrain from carrying out a suspicious transaction until having forwarded a suspicious transaction report to the FMS (unless of course this could frustrate efforts to pursue the beneficiaries of the suspected money laundering operation).

748. Although the AML Law and various other regulations address “tipping off”, the provisions are not fully in compliance with Article 8 of the Second EU AML Council Directive. The Georgian Authorities should reconsider the provisions regarding confidentiality with the objective of adding directors and employees of monitoring entities and include the tipping off prohibition for ongoing money laundering investigations.

749. Supervisory bodies have to inform immediately the FMS if they reveal a transaction subject to monitoring (including transactions suspected to be related to money laundering) that has not been forwarded to the FMS, but they are not obliged to do this if other facts could constitute evidence of money laundering. The Georgian authorities may wish to broaden the scope of this provision to all facts (being a specific transaction or not).

750. There are some requirements for internal control procedures. In respect of some DNFBP, the specific decree required to implement internal control is missing (e.g. the notaries), even though there are provisions covering this in the AML Law.

4.2.3 Compliance with Recommendation 16

	Rating	Summary of factors relevant to s.4.2 underlying overall rating
R.16	**Partially compliant**	No reporting requirements regarding real estate agents, lawyers and accountants; the existing requirements are ineffective and the internal control procedures are not always fully in place. More outreach and guidance to those DNFBP with reporting obligations is required to explain the reporting obligation.

4.3 Regulation, supervision and monitoring (R.17, 24-25)

4.3.1 Description and analysis

Casinos

751. The Ministry of Finance is appointed as a supervisory body for casinos (Article 4 of the AML Law). According to Article 5 (in conjunction with Article 11) of the "Law on Organizing Lotteries, Gambling and other Prizewinning Games" (Annex 34), a permit is required to open a casino. The Ministry of Finance is the issuing authority and the regulatory and supervisory body concerning casinos (Article 7 and 36 of this Law). The requirements for opening a casino are set out in Article 21 of the law, which requires the submission of various documents *inter alia* a certificate that the applicant has no outstanding tax liability and the rules of conduct of the casino. To operate a casino an annual permit fee of GEL 5 million is also required. To facilitate tourism, for two Regions of Georgia exceptions were made (Batumi: the permit fee amounts GEL 1 million; Tskaltubo: no permit fee is required). At present, two casinos in Georgia have received a permit[44]. No fit and proper criteria with respect to holders, beneficial owners or significant shareholders of casinos are in place (neither are there checks made on the origin of the funds). In these circumstances, the regime in place in respect of casinos does not fully comply with the requirements of Recommendation 24, which requires measures to prevent criminals or their associates from holding or being the beneficial owner of a significant or controlling interest, holding a management function in, or being an operator of a casino. The supervisory activities of the Ministry of Finance are not proactive or exacting and also do not amount to the effective supervision which Recommendation 24 demands for casinos. The examiners were advised that the Ministry of Finance only exercises its supervisory powers if a specific problem has been alerted to them. To conduct an onsite inspection a court order is needed.

752. The Decree of the Ministry of Finance addressing the application of (financial) sanctions on casinos (or directors) for non-compliance with the AML Law and regulation is not yet adopted. It could be argued that non-compliance with the AML Law and/or Regulation can be sanctioned by the Ministry of Finance (Article 7, 36 and 37a in conjunction with Article 37 para 2 of the Law on Organizing Lotteries, Gambling and other Prize-winning Games). If that would be the case the sanctions would include a fine and (in the last resort) the revocation of the permit. In practice, no

[44] At the time of the second evaluation of Georgia, 39 casinos were licensed (of which 20 were operative). No information is available regarding (possible) operative unlicensed casinos in Georgia, the Ministry of Finance has, as well as other regulatory bodies in Georgia, no competence with regard to these illegal parties. However in general operating without a permit or a licence is punishable under Article 164 of the Administrative Violation Code or Article 192 of the Criminal Code (in case of large quantities).

sanctions have been imposed on casinos. The examiners were advised that in general, directors of a casino are personally liable for the activities of the casino.

Dealers in precious metals and dealers in precious stones

753. According to Article 4 of the AML Law, the Ministry of Finance is appointed as a supervisory body "*for entities engaged in activities related to precious metals, precious stones and products thereof*". No effective regulatory and monitoring regime is in place. The examiners were advised that in practice the Ministry of Finance does not execute its supervisory duties. No sanctions are applicable if dealers in precious metals and dealers in precious stones are not complying with the AML Law.

Notaries

754. According to Article 4 of the AML Law, the Ministry of Justice is appointed as a supervisory body for notaries with respect to compliance with AML Law and Regulation. Notaries are regulated under the Law on Notary Service (Annex 36). To act as a qualified notary, the following conditions have to be fulfilled:

- Georgian citizenship,
- higher education in law,
- experience as an intern or at least one year experience as a notary, notary's secretary or consultant and
- having passed the notary qualification exam for notaries (Article 12 of the Law on Notary Service).

No licence or permit is needed. Article 11 of the Law on Notary Service states that the Ministry of Justice is responsible for supervising notaries and that it's within its competence to require from notaries registers, books and other appropriate documents necessary for supervising notaries' activities. Since the beginning of 2004, the Ministry of Justice has conducted scheduled onsite AML/CFT inspections every two years and also, if needed, *ad hoc*-inspections to examine compliance with the AML Law and Regulation. Three to four employees are dedicated to the department in charge of these inspections and - if necessary - external experts are added.

755. The Ministry of Justice periodically issues journals including information regarding AML/CFT issues and keeps a black list of suspicious persons (convicted criminals). This information is also available online. As mentioned above, the FMS has provided notaries with guidelines/feedback on how to define a suspicious transaction (Sections 4.1 and 4.2). The examiners were advised that the definition of 'suspicious' however is widely discussed by the notaries with the Ministry of Justice. The Ministry of Justice, as the supervisor, also considers that it needs clearer guidance on what amounts to an STR in order for them to monitor compliance by notaries with the STR obligation effectively. So far, the Ministry of Justice has not issued a normative act on how internal control should be exercised (see Section 4.2).

756. The examiners were advised that the Regulation on Disciplinary Responsibility of Notaries (latest amendments issued on February 1, 2005 under Decree N. 177) contains the sanctions in relation to non-compliance with the AML Law and Regulation. Sanctions can thus be taken against licensed notaries but none have been issued.

4.3.2 Recommendations and comments

757. At present, the supervision and monitoring of DNFBP is very limited. The notaries appeared to be the most engaged DNFBP with AML/CFT obligations and there have been some inspections of them.

758. Casinos are not licensed in a way which requires steps to be taken to ensure that criminals or their associates do not hold controlling interests or management functions. Fit and proper requirements should be applied to holders or beneficial owners of significant or controlling interests in casinos and those holding management functions, or being operators. Supervision of casinos is inadequate at present. It was considered high risk at the time of the last evaluation. The role of the Ministry of Finance, as the designated supervisor in AML/CFT measures, needs revisiting. The examiners consider that the Ministry of Finance should undertake a proactive programme of AML/CFT inspection without the need of a court order and should have the power to make dissuasive sanctions for AML breaches.

759. It was unclear if there is any strategic plan or risk analysis as to which other parts of the DNFBP have proven low risks and which are high risks in relation to ensuring compliance with Recommendation 24.

760. Monitoring or ensuring compliance regarding dealers in precious metals and dealers in precious stones has not been implemented. In this area too, the examiners recommend that the Ministry of Finance should ensure that dealers in precious metals and dealers in precious stones are subject to effective systems for monitoring and ensuring their compliance with the AML Law. The Ministry of Finance needs to ensure that it has adequate powers to sanction for non-compliance with the AML Law.

761. Regarding notaries, a solid base is in place. There have been AML/CFT inspections and the Ministry of Justice has the power to sanction. The FMS together with the Ministry of Justice needs to develop their guidance to notaries on suspiciousness in the light of concerns expressed to the evaluation team. However, as notaries are supervised (by the Ministry of Justice), Georgia is in compliance with Article 6 (3) of the Second EU AML Council Directive in respect of notaries, though other independent legal professionals are not covered.

4.3.3 Compliance with Recommendations 17 (DNFBP), 24 and 25 (Criteria 25.1, DNFBP)

	Rating	Summary of factors relevant to s.4.5 underlying overall rating
R.17	**Partially compliant**	No sanctions are applicable concerning dealers in precious metals and dealers in precious stones, and casinos for non-compliance with the AML Law.
R.24	**Partially compliant**	Licensing of casinos should include inquiry into the fitness and propriety of holders or beneficial owners of significant or controlling interests in casinos and those holding management functions. Supervision regarding casinos is ineffective at present and effective systems for ensuring compliance in respect of dealers in precious metals and dealers in precious stones are not in place.
R.25	**Partially compliant**	Guidance on STRs and feedback to monitoring entities (even in the case of notaries) needs supplementing.

4.4 Other non-financial businesses and professions/ Modern secure transaction techniques (R.20)

4.4.1 Description and analysis

762. Criterion 20.1 states that countries should consider applying Recommendations 5, 6, 8 to 11, 13 to 15, 17 and 21 to non-financial businesses and professions (other than DNFBP) that are at risk of being misused for money laundering or terrorist financing.

763. As mentioned under Section 4.1 - apart from financial institutions (including postal organisations), customs authorities and DNFPB as referred to in Recommendation 12 - also

- entities organizing lotteries and commercial games (not being casinos);
- entities engaged in activities related to antiques;
- entities engaged in extension of grants and charity assistance

are monitoring entities (Article 3 of the AML Law).

764. According to Article 4 of the AML Law, the Ministry of Finance is appointed as supervisory body for these entities.

Entities organizing lotteries and commercial games

765. The level of the regulatory and supervisory regime regarding entities organizing lotteries and commercial games is apparently more or less similar as that regarding casinos (see Sections 4.1 to 4.3 above). On 28 July 2004 the FMS issued the Regulation on Rule and Terms of Receiving, Systemizing and Processing the Information by Persons Organizing Lotteries and Commercial Games and Forwarding to the Financial Monitoring Service of Georgia (approved under Decree 94; Annex 24). The FMS has provided these entities with a reporting form template. Up till the end of 2005, no transaction report has been forwarded to the FMS by these entities.

Entities engaged in activities related to antiques

766. No normative acts other than what is stated in the AML Law have been issued. No transaction reports have been received.

Entities engaged in extension of grants and charity assistance

767. The Georgian authorities have taken the decision to make entities engaged in the extension of grants and charity assistance monitoring entities under the AML Law. The Ministry of Finance is the supervisory authority for those bodies, but no Decree on supervision has been issued.

768. Regarding criterion 20.2, it was noted that the largest Georgian banknote is GEL 500 (approx EUR 220) which seems to be not generally in circulation. However, Georgian society is still predominantly cash based. The Georgian authorities and the NBG are aware of this and anticipate that measures being taken to reduce reliance on cash will bear results within about five years. The NBG is working on an extension of the field of non cash settlement methods. Georgian banks are involved in the SWIFT system. Measures are being taken in the public sector to pay salaries via electronic transfers.

4.4.2 Recommendations and comments

769. Georgia has taken steps to extend AML/CFT requirements to some other categories of DNFBP. However, the regulatory structure will need to ensure that the relevant FATF Recommendations (5, 6, 8 to 11, 13 to 15, 17 and 21) are being applied in practice in these cases.

770. The Georgian authorities are fully aware of the continuing level and use of cash in the economy and are taking steps to reduce reliance on cash over the next five years.

4.4.3 Compliance with Recommendation 20

	Rating	Summary of factors underlying rating
R.20	**Largely compliant**	Georgian has extended Recommendation 20 to non-financial businesses and professions other than DNFBP in the cases of dealers in antiques and entities organising lotteries and commercial games and entities engaged in extension of grants and charity assistance but effective implementation of the relevant FATF Recommendations still needs to be achieved. Further measures to encourage a reduction of cash in the economy need to be taken.

5 LEGAL PERSONS AND ARRANGEMENTS AND NON-PROFIT ORGANISATIONS

5.1 Legal persons – Access to beneficial ownership and control information (R.33)

5.1.1 Description and analysis

771. Recommendation 33 requires countries to take legal measures to prevent the unlawful use of legal persons in relation to money laundering and terrorist financing by ensuring that their commercial, corporate and other laws require adequate transparency concerning the beneficial ownership and control of legal persons. Competent authorities must be able to have access in a timely fashion to beneficial ownership and control information, which is adequate, accurate and timely. Competent authorities must be able to share such information with other competent authorities domestically or internationally. Bearer shares issued by legal persons must be controlled.

772. In Georgia, registration of enterprises is carried out by the local competent tax authorities (Article 4 of the "Law of the Republic of Georgia on Entrepreneurs", Annex 39). A collective Entrepreneurial Register is kept by the Tax Department of the Ministry of Finance. The data of the Entrepreneurial Register is published in an official press organ and the tax authorities have to send a copy of the registration document to the Department of Statistics at the Ministry of Economic Development of Georgia. The decision on registration of joint stock companies shall also be sent to the National Commission on Securities of Georgia. The information in the register is open to the public (Article 4 para 4). Any person may have access to and obtain extracts from the Entrepreneurial Register.

773. According to Article 5 of the "Law of the Republic of Georgia on Entrepreneurs", documents on registration shall contain for all enterprises the following data:

a) the firm name;
b) the organisational-legal form;
c) the location (legal address);
d) the beginning and the end of economic year;
e) the name, date and place of birth and place of residence of each founding partner; if the founder is a legal person – its firm name and registration data (legal address, name of the registering body which registered the legal person, data and number of the registration, organisational-legal form, details of its representative);
f) the powers of representation.

774. In the case of limited liability companies, joint-stock companies and cooperatives, the following shall be additionally indicated:

a) the amount of the authorised capital and certificate of the amount of contribution made;
b) the name, date and place of birth and place of residence of each director and, in case of existence of a supervisory board, each member of the supervisory board.

775. It was understood that shareholder information appears in the entrepreneurial register, though the examiners could not find authority for this.

776. Persons representing the company are obliged to present a sample of their signature that they will use in business relations. Applications for registration, sample of signature, as well as enclosed documents or copies should be notarized (certified).

777. According to Article 5^6 of the Law on Entrepreneurs, all changes in the facts which are subject to registration have to be announced to the Register and they come into force only after registration. Only for joint stock companies a change of partner does not require registration (Article 5^6 para 3). The directors are responsible to perform registration of changes. In the case of liquidation, the tax authority is obliged to delete the enterprise from the Register. How quickly changes are notified and how up to date the register is, was unclear.

778. The "Law of the Republic of Georgia on Entrepreneurs" does not deal with "beneficial owners" as it is defined in the Glossary to the FATF Recommendations (i.e. those persons who ultimately own or exercise effective control over a legal person). The Georgian authorities drew the attention of the examiners to Article 6 section 5 of the AML Law. As noted earlier, the examiners consider that the AML Law only deals with the identification of the persons authorised to manage legal entities and those authorised to represent them (proxies). In Georgian Law there is no requirement to fully identify beneficial owners or to register beneficial owners, and therefore criterion 33.1 is not satisfied.

779. As for the timely accessibility to the abovementioned information to competent authorities (criterion 33.2), according to Article 10, Para 4 let. a) AML Law, the FMS is authorised to request and obtain from monitoring entities additional information and documents (original or copy) available to them, including confidential information, on any transaction and parties to it, for the purpose of revealing the facts of illicit income legalisation or terrorism financing. Improper implementation of these requirements by the monitoring entities will cause application of sanctions by the designated supervisory authorities. For the purpose of implementing these functions, the FMS can forward questions and obtain information from all state or local self-government and government bodies and agencies, as well as from any individual or legal entity, which exercises public legal authority granted by the legislation. Furthermore, the Criminal Procedure Code of Georgia foresees for the investigative authorities the possibility to apply for different investigative actions (for instance, search, levy, seizure, etc.) that may be necessary for investigations. However, as noted above, neither in the AML Law nor in FMS Decrees or in any other Georgian normative act, a definition of "beneficial owner" within the meaning of the FATF Recommendations can be found. There are also no legal requirements to take reasonable measures to determine the natural persons who ultimately own or control the customer; financial institutions are not obliged to determine/understand the ownership of customers. Hence, the evaluators had concerns that for the investigative authorities hard information on real beneficial ownership of legal persons will not be available in a timely fashion as the obliged entities themselves do not register or seek this information.

780. According to Article 52 Para 1 of the "Law of Georgia on Entrepreneurs", joint stock companies may issue shares only in nominal form. The Georgian authorities indicated that bearer shares are not allowed in Georgia. Therefore, they state that there are no Georgian companies registered with bearer shares. They have put in place measures in Article 5 section 2 (h) of the AML Law, which obliges commercial banks to put under monitoring an extension of a loan, secured by bearer securities. It is understood that this is intended to cover potential transactions by foreign customers which may be secured by bearer securities. The requirements for registration of branches of foreign companies in Georgia are set out in Article 16 of the Law on Entrepreneurs. The provisions which the examiners have seen indicate that only formal documentation including the decision on the appointment of the director of the branch or person with the power of attorney would appear on the register.

5.1.2 Recommendations and comments

781. Georgian Law contains no legal provisions to register the beneficial ownership of companies in the way as it is defined in the Glossary to the FATF Recommendations. As the monitoring entities are also not obliged to keep this information, it would be a lengthy and difficult process for the investigative authorities to try to gather such information, and ultimately may prove impossible. It is recommended that Georgia reviews its commercial, corporate and other laws, with a view to taking measures to provide adequate transparency with regard to beneficial ownership.

5.1.3 Compliance with Recommendation 33

	Rating	Summary of factors underlying rating
R.33	**Partially compliant**	While Georgian law allows for some transparency with respect to immediate ownership, no regulations are in place providing adequate transparency concerning the beneficial ownership and control of legal persons. Though shareholder information seems available on the entrepreneurial register, the examiners could not find authority for this.

5.2 Legal Arrangements – Access to beneficial ownership and control information

5.2.1 Description and analysis

782. Recommendation 34 requires countries to take measures to prevent the unlawful use of legal arrangements in relation to money laundering and terrorist financing by ensuring that commercial trust and other laws require adequate transparency concerning the beneficial ownership and control of trusts and other legal arrangements.

783. Georgian legislation does not contain provisions on trusts and the examiners have been advised that no domestic trusts or other legal arrangements similar to trusts exist in Georgia. Accordingly, no separate regime of registration for trusts is in place. The evaluators were advised that no trusts created in other countries could operate in Georgia.

784. The Georgian authorities advised that no Georgian residents act as trustees for foreign trusts.

785. Georgia has not signed the Hague Convention on the Law Applicable to Trusts and on their Recognition.

5.2.2 Recommendations and comments

786. Domestic trusts cannot be established.

5.2.3 Compliance with Recommendation 34

	Rating	Summary of factors underlying rating
R.34	**Not applicable**	

5.3 Non-profit organisations (SR VIII)

5.3.1 Description and analysis

787. Non-profit organisations are regulated by the Georgian Civil Code and the Tax Code of Georgia. There are two types of non-profit organisations: funds (financial or property based organisations which are not based on membership), and associations (or unions) for the achievement of common goals. Associations cover a wide range of different activities e.g. sports organisations, professional associations, non governmental organisations in the field of human rights, environmental protection, and religious organisations. Charitable organisations are associations which have also been registered for charitable purposes. Both funds and associations are registered by the Ministry of Justice.

788. For the civil registration of all funds and associations, it is necessary to submit to the Ministry of Justice the following documents: a statement, resolution of establishment (for funds by the founders of the fund), certificate of legal address (Civil Code of Georgia, Article 31, section 1), registration fee in the amount of 60 GEL (Article 7^1 Law of Georgia on Registration Fees).

789. There are 1,500 funds, and 8,000 unions / associations registered in the Ministry of Justice. It was unclear how many of these were active.

790. If the data provided for registration is not correct, the fund will not be registered, but there is no obligation on the Ministry of Justice to inform law enforcement. There are no best practice documents and no rules for giving and soliciting donations, and no restrictions on the amount of donations. Donations may also be anonymous.

791. The same department in the Ministry of Justice which is in charge of registration, is also partially responsible for supervision of funds (*inter alia*, verifying if funds have been spent as planned). Every year the funds are obliged to submit reports of their activities, from which the Ministry of Justice indicated that they can, theoretically, identify activities beyond their statutes, which they can then further clarify. No examples of this were given. Equally the Ministry of Justice receives information from the public from which they can request further information of the registered fund. They indicated that they could initiate "auditing" to check if funds are operating within their remit but how often this was done was unclear. It is not compulsory and there were no detailed, regular inspections by the Ministry of Justice. The Ministry of Justice can, as necessary, summon those responsible for registered bodies to the Ministry. Typically this involves resolution of disputes between the founders and members of the Board. Though this rarely happens. If information provided in the annual report is not correct, administrative measures can be taken which could include abolition of the registration.

792. The Ministry of Justice does not supervise financial activities. The funds are registered with the tax authorities and have a tax registration code. Income and expenditure issues are handled by the tax authorities.

793. The requirements for registration of associations, which are charitable organisations, by the Tax Board are stipulated in the Tax Code of Georgia. In accordance with this law, at least one year of experience in carrying out charitable activities is required to achieve charitable status. The grant of this status is performed by the tax authorities. Revocation of this status is by the Minister of Finance. Based on Article 32 of the Tax Code of Georgia, the grant of charitable status is made on the basis of a written statement by the organisation, which should include: name, organisational and legal status, major objectives, main direction of activities for the past year, addresses of the managing body and the branch, a copy of the charter of the organisation, a copy

of the Ministry of Justice civil registration certificate, the previous year's activities report describing work of the organisation (projects, services), financial documents for the previous year authenticated by an independent auditor (balance sheet, profit/loss statement, etc.).

794. There is no time limit on the grant of charitable status. After achieving charitable status, charitable organisations are required under Article 32 section 9 Tax Code of Georgia to submit to the corresponding tax agency before 1 April of every year, the following:

a) a programme report of the activities of the previous year, indicating a detailed description of implemented activities, including economic support given;
b) a financial statement of income received and expenditure indicating income sources and purpose of expenditure;
c) financial documentation for the previous year authenticated by an independent auditor (balance sheet, profit/loss statement).

795. The annual programme report of implemented activities and financial documentation should be published and be available to all interested parties.

796. The revocation of charitable status is performed if the organisation violates requirements under the Tax Code or its civil registration is suspended.

797. The Ministry of Finance keeps a "Common Register" of charitable organisations containing the title of the organisation, domicile, objectives, date of award of the status, identity and addresses of the managing body. Changes should be notified to the Tax authorities within one month. As of 1 May 2006, 29 organisations (associations) were listed in the "Common Register". There are 11 tax inspectors supervising these 29 charitable organisations.

798. The Georgian authorities also took the decision to make entities engaged in the extension of grants and charity assistance monitoring entities under the AML Law, with all the obligations that flow from that. The Ministry of Finance is the supervisory authority for these bodies, but no decree on supervision had been issued and, as yet, the Ministry of Finance is not engaged with AML/CFT supervision of these entities. In accordance with Article 5 section 2 (k) of the AML Law the transfer of funds from or to the account of entities engaged in "grants or charity assistance" are also subject to monitoring by banks, where the amount exceeds 30,000 GEL. The Georgian authorities consider that the AML Law provisions and the controls of the Ministry of Justice and tax authorities including the need for financial transparency go a considerable way to reducing the risks of clandestine diversion of funds intended for legitimate purposes to terrorist organisations.

799. There has been no special overall review of the adequacy of laws and regulations that relate to non-profit organisations that could be abused for the financing of terrorism. The Ministry of Justice indicated that reviews can be done on a case by case basis in respect of individual funds or associations. There was little coordination between the Ministry of Justice and the Tax authorities on these issues, or with law enforcement, albeit that law enforcement emphasised that this area posed risks for terrorist financing.

Additional elements

800. Some of the measures in the Best Practice Paper are said to be in place, though the Ministry of Justice was unfamiliar with the FATF paper.

5.3.2 Recommendations and comments

801. It is accepted that there are procedures in place to ensure some financial transparency and that there are reporting structures over funds and associations. The treatment of the issue in the AML Law is a positive development.

802. As indicated, however, it appears that no formal review of the adequacy of laws and regulations that relate to entities that can be abused for the financing of terrorism has taken place.

803. It is advised that a formal analysis is now undertaken jointly by the FMS, together with all those governmental bodies involved with the non-profit sector, of the threats posed by this sector as a whole and the risks identified. It is then recommended that the Georgian authorities review the existing system of laws and regulations in this field so as to assess themselves the adequacy of the current legal framework. Consideration should also be given in such a review to effective and proportional oversight of the NPO sector. Specifically, the Ministry of Finance should begin AML/CFT monitoring of the entities engaged in extension of grants and charity assistance.

804. The transaction monitoring by the banks under Article 5 (2) (b) AML Law will only apply over 30,000 GEL and, without more guidance on suspiciousness in the context of financing of terrorism in transfers below the 30,000 GEL threshold, potential STRs in respect of smaller sums (assuming that the financing of terrorism reporting obligation is clarified) may not be detected by the banks. The issuing of guidance to financial institutions on the financing of terrorism risks of this sector in transactions which may be suspicious below the 30,000 GEL threshold is urged.

805. Consideration should also be given as to whether (and how) further measures need taking in the light of the Best Practices Paper for SR VIII. At present oversight of this sector is largely reactive to information provided. More intensive programme verification and a regular programme of direct field audits should be considered in respect of those identified, vulnerable and active parts of the NPO sector, which are not subject to formal AML/CFT supervision. In the context of audits which currently take place, there needs to be closer liaison between all the bodies involved in oversight of the NPO sector and more co-ordination and sharing of information between them, and, as necessary, with law enforcement. It would be helpful also to raise awareness of SR.VIII and its interpretative documents with all existing control bodies engaged with the NPO sector so that each of them could take account of SR.VIII issues in current oversight.

806. Consideration might usefully be given as to whether and how any relevant private sector watchdogs could be utilised in oversight of this sector.

5.3.3 Compliance with SR.VIII

	Rating	Summary of factors underlying rating
SR.VIII	**Partially compliant**	• No special overall review of the risks in the NPO sector has been undertaken, though there is some financial transparency and reporting structures to the Ministry of Justice and tax agencies. • No regular programme of field audits. The Ministry of Finance should begin AML/CFT monitoring for entities engaged in extension of grants and charity assistance. Consideration should be given to effective and proportionate oversight of the whole NPO sector. Closer liaison between the governmental departments involved is required and greater sharing of information between them and with law enforcement. • STR guidance should be issued in respect of transactions in this sector below the 30,000 GEL.

6 NATIONAL AND INTERNATIONAL CO-OPERATION

6.1 National co-operation and co-ordination (R. 31)

6.1.1 Description and analysis

807. Recommendation 31 (and Criterion 13.1) is concerned with co-operation and coordination between policy makers, the FIU, law enforcement, supervisors and other competent authorities.

808. The Law of Georgia "on Facilitating the Prevention of Illicit Income Legalisation" (the AML Law) contains provisions on cooperation both on domestic and international levels. According to its Article 10, the Financial Monitoring Service of Georgia (FMS) is authorised to cooperate with supervisory and other authorities, provide them with information, and participate in drafting laws and other normative acts and discussions regarding the issues that regulate the economic sector and related authorities. Article 11 section 2 of the Law obliges the supervisory bodies to collaborate with each other, with competent Georgian and other countries' authorised agencies and international organisations by exchanging information and experience, and to assist law enforcement agencies within the scope of their competence. There are no specific rules for cooperation between the involved parties. However, during the on-site visit no information about the effectiveness of coordination mechanisms (e.g. guidance documents; domestic MOUs; extent and type of information exchange) was available.

809. For the banking sector a "Special Coordination Group" was established between the FMS and the National Bank of Georgia to address issues related to the AML/CFT sphere. It thus appears to the examiners that the authorities responsible for AML/CTF cooperate only on an occasional basis and that there are no mechanisms and rules concerning such a cooperation.

810. The adoption and enforcement of the AML Law caused many questions and discussions. As it is a common practice in Georgia, forums were organized with participation of the FMS, monitoring entities and supervisors where people discussed the implementation of the Law, its weak aspects and ways to improve it.

811. The FMS actively cooperates with all appropriate supervisory bodies, law enforcement agencies and other state institutions but during the on-site visit there were no statistics or information about such cooperation in practice available. Pursuant to Article 10 section 4 (a) AML Law, the FMS is entitled to request and obtain from monitoring entities additional information and documents (original or copy) available to them, including confidential information, on any transaction and parties to it, for the purpose of revealing the facts of illicit income legalisation or terrorism financing.

812. The National Security Council of Georgia (NSC) has a strategic policy-making, co-ordinating and monitoring role in areas of state security. It is a Committee which is chaired by the President of Georgia and includes the Prime Minister, the Minister of Foreign Affairs, the Minister of Defence, the Minister of Internal Affairs and the Secretary of the NSC. Other authorities can be invited to its meetings. Its structure and staffing have been already described; 28 persons within the NSC are responsible for coordination, strategy and monitoring in the area of national security. They cooperate with other authorities but the role of coordination is rather small. At present, it has no data base concerning information from other units, especially from other law enforcement authorities, but it is preparing its own data base which should be finished during 2006. If necessary, it can ask appropriate States authorities for meetings.

Additional Elements

813. This covers mechanisms in place for consultation between the competent authorities and the financial and other sectors, including DNFBP that are subject to AML/CFT Laws, Regulations, and Guidelines. The evaluators were informed that cooperation takes place and that between the competent authorities, the financial sector and other sectors (including DNFBP) mechanisms for consultation exist. For instance, the FMS is in the process of drafting a special feedback form, in close co-operation with the Georgian Bankers Association which will provide case-specific feedback to the monitoring entity concerned, on the basis of a report filed with FMS.

6.1.2 Recommendations and Comments

814. The examiners consider that despite the mechanisms which are in place, and informal coordination the response to this Recommendation could be enhanced.

815. At the operational level, cooperation is generally working between Police and Prosecutors, though more guidance to investigators on levels of evidence in money laundering cases is still required.

816. On the financial side, more work is needed to develop a consistent and even approach to supervision and regulation of financial institutions. It appears to the examiners that it is first necessary for there to be more sharing of information between the financial supervisors on the number and types of AML/CFT inspections, the types of AML/CFT infringements identified, and the sanctions imposed. It is also necessary to ensure that all supervisory authorities have sufficient powers to obtain all necessary information for inspection purposes. The sharing of such information should identify where gaps need filling by legislation or otherwise. Strategic decisions can then be taken as to whether the approach to inspection and sanctioning is both consistent and appropriate across the whole financial sector.

817. Inconsistency in legislation on market entry requirements need fully identifying to ensure also that there is a coordinated strategy to prevent criminals penetrating the financial sector.

818. To support this work, the examiners advise that a coordination of senior officials responsible for AML/CFT in each of the relevant sectors is set up to assess the performance of the system as a whole and make recommendations, as necessary, to government. This group could be tasked with ensuring, that those bodies which have not so far issued relevant decrees to complete the regulatory framework, do so quickly. It may be helpful to involve also the Customs service in the coordination group so that they are fully engaged with the issue.

6.1.3 Compliance with Recommendation 31

	Rating	Summary of factors underlying rating
R.31	**Partially compliant**	The authorities responsible for AML/CTF cooperate only from time to time but there are no mechanisms and rules concerning such a co-operation.

6.2 The Conventions and United Nations Special Resolutions (R. 35 and SR.I)

6.2.1 Description and analysis

819. Georgia acceded to the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the Vienna Convention) on 8 January 1998. It was ratified on 28 May 1997 and it has been in force since 8 April 1998. The 1999 United Nations International Convention for the Suppression of the Financing of Terrorism ("Terrorist Financing Convention") was ratified on 6 June 2002 and has been in force since 27 October 2002). Both of these Conventions were ratified without reservations. The process of ratification of the 2000 United Nations Convention against Transnational Organised Crime ("Palermo Convention"), which was signed on 13 December 2000, was pending at the time of the on-site visit [45].

820. How Georgia has implemented the obligations under these Conventions has already been touched upon in earlier sections. So far as the Vienna Convention is concerned, the Methodology requires assessors to check whether Articles 3-11, 15, 17 and 19 are fully implemented. Specifically it has been noted earlier that with regard to some aspects of the physical and material aspects in Article 3, para.1 (b) (i) and Article 3, para. 1 (c) (i) need further clarification (that is to say the element of conversion / transfer of property knowing that property is proceeds for the purpose of helping any person evade the legal consequences of his action and simple acquisition, possession or use of property. Equally there are problems with associations or conspiracy to commit money laundering and the threshold limitation is not in line with the Vienna Convention. The same points can be made in respect of the Palermo Convention (albeit that this Convention was not ratified at the time of the on-site visit). The confiscation provisions of the Vienna Convention are now basically in place and it is noted that the special investigative technique of controlled delivery is available to law enforcement in Georgia.

821. With regard to the Palermo Convention provisions, it is noted that Georgia has within its Criminal Code participation in an organised criminal group as a separate offence (and this is a predicate offence to money laundering). As noted earlier though, in Georgia the offence of tax evasion carries five years and is not a predicate offence for money laundering despite that it is regarded as a serious offence under the Palermo Convention. Article 2 (b) defines serious offences as those for which a term of imprisonment of at least four years can be imposed. It is also noted that a key requirement of the Palermo Convention (liability of legal persons) is not covered. On the other hand, there is a long statute of limitations for money laundering and terrorist financing offences.

822. With regard to the Terrorist Financing Convention, the assessors need to be satisfied that Articles 2-18 are satisfied. At the time of the on-site visit, as has been noted, the criminalisation of the financing of terrorism was at best very incomplete and a specific autonomous offence of terrorist financing needed creating which fully covers all the elements of the Methodology and Interpretative Note. The same problem with regard to the liability of legal persons arises under the Terrorist Financing Convention.

823. Article 18 (1) (b) of the Terrorist Financing Convention requires financial institutions and other professions involved in financial transactions to utilise the most efficient measures available for the identification of the usual or occasional customers, as well as customers in whose interest accounts are opened and for this purpose to consider *inter alia* adopting regulations prohibiting the opening of accounts where the holders or beneficiaries are unidentified or unidentifiable, and

[45] On 5 September 2006 Georgia also ratified the Palermo Convention.

measures to ensure that such institutions verify the identity of the real owners of such transactions. It has been noted above that there is no definition of a beneficial owner in the AML Law. This and other aspects of the preventive measures under this Convention need further work for effective implementation.

824. As discussed in relation to SR.III above, Georgia has introduced a system of implementation of the United Nations Security Council Resolutions. However, there are some concerns about the practical implementation of these Resolutions.

Additional elements

825. Georgia has signed on 30 April 2002 and ratified on 17 February 2004 - without reservations - the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS N. 141 "Strasbourg Convention"); it is in force since 1 September 2004. Comments concerning the effectiveness of implementation of this Convention were made in section 2.1 and 2.3. Georgia should now be in a position to offer mutual legal assistance in tracing assets subject to forfeiture, and for the freezing, seizing and confiscating of objects, instrumentalities, direct and indirect proceeds and enforce foreign criminal confiscation orders both property and value based. Georgia has not yet signed or ratified the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS No. 198).

6.2.2 Recommendations and comments

826. Georgia has implemented most of the relevant conventions except the Palermo Convention, where the process of ratification was pending during the on-site visit. It is recommended that Georgia review in detail its implementation of the relevant Conventions and the United Nations Special Resolutions.

6.2.3 Compliance with FATF Recommendations

	Rating	Summary of factors underlying rating
R.35	**Partially compliant**	The Vienna and Terrorist Financing Convention had been brought into force at the time of the on-site visit. Some aspects of the physical and material elements of the Vienna Convention need further clarification (transfer of property knowing that property is proceeds for the purpose of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his action and simple acquisition or use of property known to be proceeds are not fully covered). There is a reserve on the effectiveness of implementation of the money laundering offence under the Vienna Convention. At the time of the on-site visit, the Palermo Convention was not ratified[46]. Several issues under that Convention were problematic including corporate liability and the threshold for the money laundering offence.
SR.I	**Partially compliant**	While the United Nations lists are being circulated, there is no clear legal structure for the conversion of designations under 1267 and 1373 and a comprehensive system is not fully in place. In particular, insufficient guidance and communication mechanisms with all financial intermediaries and DNFBP. Georgia has not provided clear and publicly known procedures for delisting and unfreezing. The Terrorist Financing Convention, though in force, is not fully implemented – including Article 2.1 (the TF offence) and parts of Article 18 in connection with the identification of beneficial owners.

6.3 Mutual legal assistance (R.32, 36-38, SR.V)

6.3.1 Description and analysis

Mutual Legal Assistance: general rules

827. The process of mutual legal assistance is regulated by Chapter XXXII of the Criminal Procedure Code of Georgia. In addition to the Vienna and Strasbourg Convention already referred to, the Georgian Parliament has ratified the European Convention on Mutual Assistance in Criminal Matters (ETS 030). It entered into force on 1 November 2000 and the first of its Additional Protocols (ETS 99). Georgia has made reservations to both. The second additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (CETS 182) has not yet been signed. Furthermore, the Georgian Parliament has signed on 22 January 1993 the Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters among the Commonwealth of Independent States (CIS). The following bilateral agreements/treaties include provisions for exchange of information, documentary evidence, execution of warrants etc. They include all kinds of criminal activities including money

[46] On 5 September 2006 Georgia also ratified the Palermo Convention.

laundering:

1. Treaty between Georgia and Bulgaria on the Cooperation in Criminal Matters.
2. Agreement between the Government of Georgia and the Government of the Russian Federation on Cooperation and Mutual Legal Assistance in Cases Involving Illegal Financial Operations, Legalisation of Illicit Incomes, and Financial Operations Related to it.
3. Agreement between the Government of Georgia and the Government of Armenia on Exchange of Information in Criminal Matters.
4. Memorandum of Understanding between Ministry of Security, Ministry of the Interior, Ministry of Incomes and Revenues of Georgia and Police of United Kingdom of Great Britain and Northern Ireland, Royal Prosecutor's Office of England and Wales, Financial and Economic Crimes Office, Her Majesty's Tax Office, National Unit of Crime, National Criminal Investigative Unit, on Fight against Serious Crimes, Organized Crimes, Illegal Drug Trafficking and Legal Assistance in other similar Crimes of Mutual Interest.
5. Agreement between the Government of Georgia and the Government of the Arab Republic of Egypt on Cooperation in Fights against Crime.
6. Agreement between the Government of Georgia and the Government of Turkmenistan on Exchange of Legal Information.
7. Agreement between the Government of Georgia and the Government of Turkmenistan on Legal Assistance in Civil and Criminal Matters.
8. Agreement between the Government of Georgia and the Government of Latvia on Fight against Terrorism, Drug Trafficking and other Organized Crimes.
9. Agreement between Georgia and Ukraine on Mutual Legal Assistance in Civil and Criminal Matters.
10. Agreement between the Government of Georgia and the Government of Uzbekistan on Cooperation in Fights against Crime.
11. Agreement between Georgia and Bulgaria on Mutual Legal Assistance in Criminal Matters.
12. Agreement between the Government of Georgia and the Government of The United States of America on Cooperation in Promotion and Strengthening of Rule of Law.
13. Treaty between Georgia and Kazakhstan on Legal Assistance in Civil and Criminal Matters.
14. Treaty Between Georgia and the Russian Federation on Legal Assistance in Civil, Family and Criminal Matters.
15. Agreement between Georgia and Greece on Legal Assistance in Civil and Criminal Matters.
16. Agreement between Georgia and Azerbaijan on Legal Assistance in Civil, Family and Criminal Matters.

828. According to Chapter XXXII CPC, the court, the prosecutor and the investigators are entitled via the Ministry of Justice or the General Prosecutor's Office to pose and fulfil requests for/of mutual legal assistance. The General Prosecutor's Office is responsible for issues concerning investigative procedures, the Ministry of Justice is responsible for issues concerning court proceedings.

829. If no agreement on mutual legal assistance is in place, the issue can be decided *ad hoc* by a special agreement between the Minister of Justice or the General Prosecutor with the corresponding officials of the foreign state (Article 247 para 2 CPC).

830. Based on the CPC, Georgian authorities are able to provide mutual legal assistance in AML/CFT investigations as set out in the Methodology at 36.1. There are no limits for collecting evidence concerning mutual legal assistance. According to Article 128 (3) CPC the court (by petition of the parties), as well as prosecutors and investigators are entitled:

- to summon through an expert any person;
- to hold a search, inspection or other investigative acts;
- to request from an enterprise, institution, organisation, private person the submission of the relevant objects and documents.

The taking of evidence of statements from persons is stipulated in Article 93 (1) CPC – every person who may be aware of the facts necessary for ascertaining the circumstances of a criminal

matter may be summoned as a witness. Foreign officers can only attend investigative activities in Georgia where this is envisaged by international agreement.

831. The data needed for a request is the following: title and address of the organ from whom the request is generated and/or the organ to where the request is transmitted; facts of the case; the request; data on the persons to whom the request is sent; the list of the requested documents and material evidence (Article 251 para 3 in conjunction with Article 249 CPC). If there is no such data in the request or if the request is incomplete, additional data is asked for. If the request for legal assistance satisfies the requirements, it is sent to the relevant District Prosecutor's Office for execution or is executed directly by the General Prosecutor's Office following normal Georgian Criminal Procedure. In the case of a refusal of a request, the requesting country shall be informed about the reasons for this decision.

832. If the fulfilment of a request should become impossible, the received documents should be returned to the foreign state via the Ministry of Justice of Georgia or the General Prosecutor's Office of Georgia. At the same time the causes hindering its execution should be stated (Article 251 para 7 CPC). The request is returned also in cases when its execution might violate the national interests, sovereignty and security of Georgia.

833. Investigative or court actions, which are connected with compulsory measures against a citizen or restriction of Constitutional rights and freedoms will be carried out if they are permitted by a foreign state court or any competent authority. There were no unreasonable, disproportionate or unduly restrictive conditions in Georgian Legislation noted. However dual criminality is an essential element for rendering mutual legal assistance, though it is not necessary that the action which is considered as a crime in the requesting jurisdiction should have exactly the same characteristics in Georgian Legislation. Paramount in this respect is said to be that the action must be punishable in Georgia. Thus the examiners were advised that offences are interpreted in a wide manner in order to provide assistance. While this may pose no problem for mutual legal assistance requests in respect of less intrusive and non-compulsory measures, it seemed to the examiners that legal assistance requests requiring intrusive measures in a money laundering case based e.g. on tax or customs predicates (for which dual criminality would not be present in Georgia) could be problematic. The Georgian authorities took the view that in such cases, mutual legal assistance could be rendered on the basis of the predicate offences so far as these are also punishable in Georgia. However, the same restrictions apply for financing of terrorism. The existing domestic financing of terrorism offences appear insufficiently wide to render assistance for all types of financing of terrorism where dual criminality is required. These issues have not been tested, and in these circumstances the examiners had reservations as to how far all types of Mutual Legal assistance could be applied in particular cases of ML and TF, if the dual criminality principle was strictly applied for coercive measures. The average time for fulfilling requests is said to be 2-3 months.

834. Any kind of confidential information concerning financial institutions and DNFBP is open for investigation if a relevant court order or a decision of another relevant authority exists. Thus, mutual legal assistance cannot be refused on the grounds of laws that impose secrecy or confidentiality requirements on financial institutions or DNFBP. There are also no restrictions for using the investigative measures of Georgian law for fulfilling requests. Fiscal matters are also no grounds for refusing a general request for mutual legal assistance.

835. There are no rules in the Georgian legislation concerning mechanisms for determining the best venue for prosecutions in cases that are subject to prosecution in more than one country (criterion 36.7: "avoiding conflicts of jurisdiction"). But the evaluation team was informed that in case such conflicts should arise, they should be solved based on Article 247 (2) CPC – the issue might be decided by an agreement between the Minister of Justice of Georgia or General Prosecutor of Georgia with the appropriate officials of the foreign state.

Confiscation / freezing (R. 38)

836. As it has been indicated, criterion 38.1 appears now to be satisfied with the package of measures adopted in December 2005 to the Criminal Code and Criminal Procedure Code. As it now appears possible domestically to seize, freeze, and forfeit objects, instrumentalities and direct and indirect proceeds and make confiscations on the property and value based principles and take provisional measures to preserve the position in respect of both property and value based confiscations, it should be possible on behalf of foreign countries. According to Georgian legislation and practice, if a foreign request for seizure or confiscation is accompanied by a court order, no further approval at a domestic level is required. However, in practice, if the request is accompanied by any other type of authorisation then a court order (e.g. prosecutorial order) the investigator/prosecutor in Georgia would apply to the court to make an order based on the foreign request. This is because, it would be contrary to Georgian legislation to seize or confiscate property without a court order. As the procedures for confiscation, seizing and freezing were new and still not fully tested, the examiners have a reserve about the future effectiveness of these provisions in the context of international cooperation.

837. The Georgian authorities indicated that arrangements for co-ordinating seizure and confiscation actions with other countries is regulated by relevant mutual legal assistance agreements, but details were not provided. There is no specific procedure for this in Georgian Law; the Georgian authorities advised that the domestic provisions are applied on a case by case basis.

838. No separate asset forfeiture fund has been considered as such in Georgia. Assets forfeited go to the general State budget and are allocated for various State needs including for law enforcement, health and education purposes.

839. Consideration has not been given to the sharing of confiscated assets with other countries where there is co-ordinated law enforcement action.

Additional Elements

840. It was understood that direct requests from foreign judicial or law enforcement authorities to domestic Georgian counterparts were not possible and that formal mutual legal assistance requests were required.

841. The Georgian authorities indicated in their replies to the Questionnaire that foreign non-criminal confiscation orders can be enforced, but no legal authority for this has been provided and as it is untested in practice, the examiners cannot say whether this is, in reality, possible.

Statistics

842. The Georgian authorities provided the following statistics concerning mutual legal assistance:

Mutual legal assistance		
2005		
	Requests sent	**Requests received**
in total	150	168
executed	53	124
returned	0	13
pending	97	31

None of the *received* requests was related to either money laundering or financing of terrorism. 5 of the *sent* requests were related to money laundering (none to terrorist financing): One was sent to Turkey, one to Ukraine and three to the Russian Federation. At the time of the on-site visit, the requests sent to the Russian Federation were already executed, the one sent to Ukraine was partially executed and the request to Turkey was still pending. As none of the requests referred to money laundering, no statistics could be provided concerning the kind of predicate offence.

843. For mutual legal assistance no statistics were available about the average time of response.

6.3.2 Recommendations and comments

844. There are reservations about the extent to which mutual legal assistance could be provided where compulsory measures are required and dual criminality is invoked particularly in respect of ML on the basis of tax and customs offences and those aspects of financing of terrorism not covered in domestic provisions.

845. Comprehensive statistics should be kept on an annual basis; statistics concerning mutual legal assistance should include also information about the predicate offence(s) and the average time of response.

846. Consideration should be given to an asset forfeiture fund and sharing of confiscated assets with other countries in joint enquiries.

6.3.3 Compliance with Recommendations 32, 36 to 38, and Special Recommendation V

	Rating	Summary of factors underlying rating
R.32	**Largely compliant**	Statistics concerning mutual legal assistance do not provide information about the average time of response. Statistics should be kept on an annual basis.
R.36	**Largely compliant**	The definitional problem of the ML offence would render MLA problematic in some ML cases based on tax and customs predicates where dual criminality is required. Similarly the width of the financing of terrorism incrimination would limit MLA based on dual criminality.
R.37	**Compliant**	
R.38	**Partially compliant**	As new provisions on seizing, freezing and confiscating proceeds and property on the value based principle are untested in international cooperation, the evaluators had a reserve on effectiveness; Unclear arrangements for coordinating seizure, freezing and confiscation actions with other countries; No consideration of asset forfeiture fund or sharing of confiscated assets with other countries where confiscation is a result of co-ordinated law enforcement action.
SR.V	**Largely compliant**	The width of the present financing of terrorism offences would limit MLA based on dual criminality (particularly for compulsory measures).

6.4 Extradition (R. 37 and 39, SR.V)

6.4.1 Description and analysis

847. The Georgian extradition scheme is mainly based on its Constitution, the Criminal Procedure Code, the Criminal Code as well as on international treaties. The Georgian Parliament ratified - with reservations and declarations - the European Convention on Extradition (CETS 24) and its additional Protocols (CETS 86 and 98) on 15 June 2001. The Convention and its Protocols were brought into force on 13 September 2001. *Inter alia* Georgia declared that it will not be responsible for the application of the provisions of the Convention and its protocols on the territories of Abkhazia and Tskhinvali region until the full jurisdiction of Georgia is restored over these territories. Furthermore, due to the reservation to the 2nd Additional Protocol to the European Convention on Extradition (CETS 86), Georgia will decide for some types of political offences on a case-by-case basis whether it will satisfy an extradition request. Georgia has concluded bilateral agreements with a number of countries which are used for extradition purposes:

- Treaty between Georgia and Bulgaria on the Cooperation in Criminal Matters.
- Agreement between Government of Georgia and Government of Russian Federation on the Cooperation and Mutual Legal Assistance in Cases Involving Illegal Financial Operations, Legalization of Illicit Incomes, and Financial Operations Related to it.
- Agreement between Government of Georgia and Government of Turkmenistan on Legal Assistance in Civil and Criminal Matters.
- Agreement between Government of Georgia and Government of Latvia on Fight against Terrorism, Drug Trafficking and other Organized Crimes.
- Agreement between Georgia and Ukraine on Mutual Legal Assistance in Civil and Criminal Matters.
- Agreement between Government of Georgia and Government of Uzbekistan on Cooperation in Fights against Crime.
- Agreement between Georgia and Bulgaria on Mutual Legal Assistance in Criminal Matters.
- Treaty between Georgia and Kazakhstan on Legal Assistance in Civil and Criminal Matters.
- Treaty Between Georgia and the Russian Federation on Legal Assistance in Civil, Family and Criminal Matters.
- Agreement between Georgia and Greece on Legal Assistance in Civil and Criminal Matters.
- Agreement between Georgia and Azerbaijan on Legal Assistance in Civil, Family and Criminal Matters.

848. In practice in most cases the European Convention on Extradition is used or the Minsk Convention for CIS countries on legal Assistance and Legal Relations In Civil, Family and Criminal Matters (1994).

849. In pursuance of the Georgian declaration of 15 June 2001 to the 2nd Additional Protocol to the European Convention on Extradition (CETS 98), the General Prosecutor's Office is the competent organ to discuss the question of extradition (in addition to the use of diplomatic channels). This is implemented in national legislation by Article 256 CPC ("Extradition of a foreign citizen") which provides in its para 1 that "*according to International Agreement on Legal Assistance, foreign state may request the extradition of its citizen who is on the territory of Georgia, if he is accused of crime committed on the territory of respective country, or if he was sentenced by the court of*

his state for a crime, or committed a crime against his state on the territory of Georgia". If the General Prosecutor of Georgia considers the request substantiated and legal, he will issue an instruction about its execution, and in case of need he will address the Ministry of Foreign Affairs of Georgia for assistance (para 4). Article 256 CPC is restrictive in that it appears that Georgia can only extradite a foreign citizen to his country of nationality. With regard to this, the Georgia authorities indicated that, on the authority of Article 2 (2) CPC, which provides that where the law of Georgia contravene international agreements and treaties, the treaties shall prevail. In practice, the examiners were advised that there was no case where Georgia had refused to extradite a foreign national to a third country. A specific example from 2004 was given, where it was advised that Georgia extradited a Turkish national to Germany [47].

850. Article 254 para 2 CPC states that a person is subject to extradition, if he/she is charged with an act punishable under criminal legislation of Georgia by imprisonment for a term of more than one year or when he/she has been convicted for such a crime. As the money laundering offence (Article 194 CCG) foresees a minimum penalty of imprisonment from four to six years in length, it can be regarded as an extraditable offence. The offences which were available to the Georgian authorities, at the time of the on-site visit, which could potentially qualify as financing of terrorism all carried penalties in excess of more than one year and thus would have been extraditable, though there has been no such application. No one has been refused extradition on the basis of the political offence exception.

851. According to Article 13 para 4 of the Constitution of Georgia, extradition of a Georgian citizen is not permitted, unless an international agreement states otherwise. However, according to Article 253 para 3 CPC the competent authorities of Georgia will pursue this Georgian citizen, if he/she, being on the territory of a foreign state, has committed an action, which would be considered as a crime according to the CCG, but has not been convicted by the court of the relevant state. In this case the Office of the Prosecutor General of Georgia will request the case file from that country for the purpose of his/her prosecution. There is no practice on this point in relation to money laundering or terrorist financing. For other criminal offences the Georgian authorities had experience of prosecuting their own nationals for offences relating to which extradition had been requested (examples were given in respect of the Russian Federation, Czech Republic, Poland and Azerbaijan). On this basis there have been successful Georgian prosecutions.

852. To ensure the efficiency of the prosecution on extradition cases, Article 260 para 1 CPC ("Transfer of the material evidences and documents") states, that "objects and documents, being possible evidences for the criminal case, and seized from the extradited person" have to be sent to the organ of the foreign country requesting extradition. In addition, Article 253 para 2 CPC prescribes that "evidence obtained in the course of investigation and court hearing in compliance with the procedure established on the territory of a foreign state shall have the equal legal force as other evidence collected in the case".

853. "Dual criminality" is a key principle for extradition. Also the principle *ne bis in idem* shall be met, but as with the rules for mutual legal assistance generally, it is not required, that the crime has exactly the same definition (criminal qualification) as in the Georgian Criminal Code. In fact, it is said to be sufficient, that the criminal act, for which the extradition is pursued, is punishable on the basis of the Georgian Criminal Code. The Georgian authorities are of the opinion, that even if financing of terrorism is not yet "directly" criminalised, it should be possible to extradite a person (as well as to render legal assistance on this crime), since a constituent element is similar to other crimes provided by the Georgian legislation (e.g. Art. 327 CCG - Formation of a Terrorist Organisation or Leading thereof or Participation therein, Art. 328 CCG - Accession and

[47] On the 25 July 2006 an amendment to Article 256 CPC was adopted. The Georgian authorities advised that this amendment covers any person being extradited to a third country.

Assistance to a Terrorist Organisation of a Foreign State or to such an Organisation controlled by a Foreign State). This has not been tested and, in any event, would not cover all aspects of financing of terrorism.

854. Political asylum in Georgia and lapse of time are reasons for the refusal of a request on extradition.

855. A person subject to extradition has all rights of an accused guaranteed by the Criminal Procedure Code of Georgia. It includes but is not limited to the right to appeal the extradition decree at the court within 15 days after the receipt. The decision of the court of first instance may be appealed to the Chamber of Criminal Cases of the Supreme Court of Georgia within 10 days after its receipt. In cases where the Appeal Court leaves the extradition decree in force, the Office of the Prosecutor General of Georgia gives the commission to the Department Executing the Court Sentences of the Ministry of Justice of Georgia to ensure the transfer of the person subject to extradition to the requesting State.

856. The extradition process is as follows: In case of disclosure of the whereabouts of a fugitive on the territory of Georgia, the Office of the Prosecutor General of Georgia determines (through the relevant Department of the Ministry of Justice) the nationality of the fugitive and checks at the Ministry of Refugees and Resettlement of Georgia whether the aforementioned person has the status of refugee in Georgia. If a person is neither a Georgian citizen nor a refugee in Georgia, the law-enforcement bodies arrest him/her for the purpose of the extradition. Within 48 hours, the relevant district prosecutor refers the request for the application of detention for extradition to the district (city) court in accordance to the territorial jurisdiction. The Court Order may be appealed within 15 days from the moment the decision is handed to the arrested person. As the term of detention for extradition is 3 months and may be prolonged no more then twice for another 2 months, the overall length of detention for extradition shall not exceed 7 months.

857. Concerning extradition the following statistics were provided:

Extradition		
2005		
	Requests sent	**Requests received**
in total	111	16
executed	36	10
refused	28	5
pending	37	0
suspended	1	1

Only one of the sent requests referred to money laundering (none to terrorist financing).

Additional elements

858. The Georgian legislation does not allow a simplified procedure of extradition.

6.4.2 Recommendations and comments

859. As there were no requests received concerning money laundering and terrorist financing cases, it is difficult to assess, whether relevant extradition proceedings would be handled without delay. Though, the legal basis is broadly in accordance with the Recommendations, it is debatable whether the courts would accept all types of financing of terrorism which could possibly be covered by the current offences in the Georgian Criminal Code as extraditable. Money laundering offences based on tax and customs predicates may not be extraditable but as the European

Convention on Extradition allows extradition to be declined in these circumstances this has no influence on the rating for Recommendation 39.

6.4.3 Compliance with FATF Recommendations

	Rating	Summary of factors relevant to Section 6.4 underlying overall rating
R.37	**Compliant**	
R.39	**Compliant**	
SR.V	**Partially Compliant**	There are no special provisions concerning extradition in relation to financing of terrorism offences; as financing of terrorism is not yet criminalised in all its aspects, extradition might be impossible in some cases.

6.5 Other forms of international co-operation (R.32 and 40 and SR.V)

6.5.1 Description and analysis

860. Article 13 (1) AML Law specifically covers international co-operation and permits Georgian bodies authorised to work on issues related to money laundering to co-operate, within their competence, with competent agencies of other countries and international organisations in matters such as receipt of information, preliminary investigation, court hearing and execution of resolutions. They are also obliged to ensure the confidentiality of relevant information and use it only for the purposes indicated in the request [Article 13 (4)]. There is no fixed timeframe for providing such assistance, though the Georgian authorities indicated that it is always provided as expeditiously as possible.

861. In addition to formal mutual legal assistance and extradition requests based on international Conventions, Georgia has concluded a number of bilateral agreements with a large number of countries as set out at 6.3.1. These bilateral agreements include provisions for exchange of information, documentary evidence, execution of warrants, etc. They include all kinds of criminal activity as well as money laundering.

862. Police authorities directly exchange information with their counterparts in foreign countries using Interpol channels. Six requests were sent in 2005 and four in 2006. There was no statistical data available showing the level of informal police international assistance, though it was indicated that police units had co-operated with counterpart units in Moldova and Ukraine. Whether this involved money laundering / terrorist financing was unclear.

863. The Georgian authorities indicated that exchanges of information can be both spontaneous and on request and in relation to both money laundering and the underlying predicate offences.

FMS

864. Article 13 (3) of the AML Law specifically empowers the FMS, without permission from any other entity or organ, to forward requests for international co-operation relating to legalisation of illicit income and terrorism financing to authorised agencies of other countries and international organisations, and to respond to such requests.

865. On June 23, 2004 the Georgian FMS became a member of the Egmont Group. Before being granted member status, the FMS underwent a three stage accession process, where all aspects, including active legislation and its ability to cooperate without any restrictions were considered. The Georgian FIU is now an active member of the Egmont Group and co-operates effectively with all financial intelligence units, of whatever type. The FMS also participates as an observer along with USA, Ukraine, etc. to the Eurasian Group on Combating Money Laundering and Financing of Terrorism (EAG). The FMS has the right to conclude independent agreements with foreign authorities on AML/CFT issues. At the time of the on-site visit, the FMS has concluded Memoranda of Understanding on information exchange with relevant authorities of Czech Republic, Serbia, Ukraine, Israel, Estonia, Thailand, Liechtenstein, Romania, Slovenia, Panama, Belgium and Bulgaria. At present, negotiations are pending with China and Moldova[48] . In making inquiries on behalf of foreign counterparts, the FIU can search its own databases, including with respect to information related to suspicious transaction reports. Similarly it can search other databases to which it may have direct or indirect access, including law enforcement databases, public databases, administrative databases and commercially available databases. Exchanges of information are not made subject to disproportionate or unduly restrictive conditions. They are no restrictions in place which would require the FMS to refuse co-operation on the sole ground that the request is also considered to involve fiscal matters.

866. The Georgian authorities provided the following information concerning the number of FIU to FIU requests for assistance, both sent from and received by the FMS for the years 2004 - 2006:

	Requests sent	Received Replies	Requests received	Sent Replies
2004	26	25	11	11
2005	42	41	15	14[1)]
2006[2)]	5	3	8	5

Explanatory Note:
[1)] 1 case is pending.
[2)] as of 15 March 2006.

867. The evaluators received some information from countries which were requested to provide information to the assessors on the effectiveness on international co-operation. One FIU (FINCEN) specifically noted that response times had steadily improved over the past four years towards the goal of 30 days as outlined under the Egmont Best Practices. They also noted that the three requests that they have sent resulted in thorough and complete replies.

Supervisory authorities

868. Article 11 (2) AML Law authorises supervisory bodies to collaborate (with each other domestically) and with other countries' authorised agencies and international organisations through exchanging information and experience, and assisting law enforcement agencies, within the scope of their competence.

869. The NBG signed an agreement with the Central Bank of the Republic of Armenia on co-operation in the field of supervision activities of credit organisations on 24 September 2004. This agreement covers co-operation issues and sharing of information in the areas of licensing, on-site and off-site inspections, and information on shareholdings in credit organisations. Similar draft agreements have been prepared in respect of the relevant supervisory authorities of Azerbaijan, Turkey and Kazakhstan. The context of these agreements is such that some assistance could be given and received on AML/CFT issues.

[48] As noted earlier, the MOUs with China and Croatia were signed after the on-site visit.

870. The National Commission on Securities and SIS have also established relationships with their foreign counterparts. The National Commission on Securities signed an MOU with Ukraine and Azerbaijan and negotiations are proceeding with Kazakhstan. The Georgian authorities indicated that there was also close co-operation with other unspecified countries.

871. No statistical information was provided indicating the level of supervisory co-operation on AML/CFT issues, or the timeframe in which any assistance was provided.

Additional elements

872. So far as exchanges of information with non-counterparts are concerned, the Georgian authorities indicated that the FMS can provide information to authorised agencies of other countries and international organisations without any commission from any other entity or organ. It was unclear whether they provided information to entities other than FIUs.

873. When the FMS requests their counterparts to provide information they do disclose to the requested authority the purpose of the request and on whose behalf the request is made.

874. The FIU, as noted, can obtain information from other competent authorities or other persons relevant information requested by a foreign counterpart FIU.

6.5.2 Recommendation and comments

875. The FIU has a broad capacity to exchange information and there appear to be no obstacles in the way of prompt and constructive information exchange. Their remit specifically includes terrorist financing information exchange as well as legalising illicit income. There is no information as to how many requests involve TF issues as opposed to AML issues. Likewise there is no information as to how quickly the FIU responds to requests. Such information as the evaluators have indicates that requests are responded to fully. The FIU are recommended to keep more detailed statistical data showing in particular their response times and whether the requests were fulfilled in whole or in part or were incapable of being fulfilled. It is also advised that statistical information is kept in relation to the numbers and types of spontaneous disclosures made by the FMS.

876. Some of the supervisory authorities have begun the process of creating international information exchange mechanisms with counterparts which could cover AML/CFT issues. The Georgian authorities should satisfy themselves that the supervisory bodies are also exchanging information on request (and otherwise) with their foreign counterparts under these agreements. It is advised that statistics be kept which show whether the requests received were able to be fulfilled. The evaluators encourage the Georgian supervisory authorities to enter into more MOUs with foreign counterparts.

877. There was insufficient information on informal international co-operation by police units. More information on this should be kept.

878. It is advised that all statistical data kept by all the competent authorities on all of these issues should be available for periodic review by the high level coordination committee advised at 6.1.

6.5.3 Compliance with Recommendations 32 and 40 and SR.V

	Rating	Summary of factors relevant to Section 6.5 underlying overall rating
R.32	**Partially compliant**	FIU statistics need refining to show timeliness of responses, and whether or not requests were capable of being fulfilled in whole or in part. More statistics need to be kept in relation to information exchange by the supervisory authorities and in respect of informal international information exchange by police units.
R.40	**Largely compliant**	Broad capacity for information exchange by FIU, but more detailed statistics required to demonstrate effectiveness. More MOUs should be considered by supervisory authorities and statistical information should be kept and made available to demonstrate extent of co-operation. More information should be kept on informal exchanges of information between police authorities.
SR.V	**Largely compliant**	There is little practice in information exchange in relation to financing of terrorism, terrorist acts or terrorist organisations. Legally the powers are in place for information exchange by the FIU as the FIU has a remit in this area. More statistical information on this aspect should be kept.

IV. TABLES

Table 1: Ratings of Compliance with FATF Recommendations
Table 2: Recommended Action Plan to improve the AML/CFT system

Table 1. Ratings of Compliance with FATF Recommendations

Forty Recommendations	Rating	Summary of factors underlying rating[49]
Legal systems		
1. Money laundering offence	**Partially compliant**	• Some of the legislative provisions need further clarification to cover all aspects of the physical and material elements in the Vienna and Palermo Conventions; preparation (which in this context is akin to conspiracy) to commit money laundering is possible for Article 194 (3) but currently not for Article 194 (1) and (2) and the examiners consider that conspiracy / preparation should be fully covered in Georgian law; • Simple possession or use of laundered proceeds should be covered; • Financing of terrorism not fully covered in designated categories of predicate offences, and insider trading should be fully covered; • The exemption for crimes committed in the tax and Customs sphere in the definition of illicit income in the preventive law should be removed; • The financial value threshold should be removed; • Further clarification of the evidence required to establish underlying predicate criminality in autonomous money laundering prosecutions should be considered, and more emphasis placed on autonomous money laundering prosecutions (especially in relation to foreign predicates) for a fully effective criminalisation of money laundering.
2. Money laundering offence Mental element and corporate liability	**Partially compliant**	• A broad range of dissuasive criminal sanctions is in place for natural persons; though the penalties for basic money laundering in some cases appeared rather low. • At the time of the on-site visit, no criminal, civil or administrative liability for money laundering in respect of legal entities.
3. Confiscation and	**Largely**	• New legal provisions are now in place to cover

[49] These factors are only required to be set out when the rating is less than Compliant.

provisional measures	**compliant**	confiscation of proceeds direct and indirect, value confiscation orders and provisional measures in support of these. The evaluators were advised that the new forfeiture provision in Article 52 (3) CCG is mandatory, but in the absence of practice the evaluators are not in a position to confirm this. Its mandatory nature needs testing in practice. • In respect of property transferred to third parties to defeat confiscation orders, there are administrative procedures to confiscate transferred / tainted property of officials and racketeers in special circumstances. However, practice has yet to be established that forfeiture from third parties of tainted property can be applied in general criminal cases. • It should clarified that the objects of money laundering and instrumentalities can be subject to mandatory forfeiture in a stand alone money laundering case. • Despite two significant confiscation orders, the examiners had a reserve on the effectiveness overall of the provisional measures and confiscation regime in general criminal cases (particularly where the administrative provisions for confiscation in respect of officials or racketeers cannot be used). New provisions need embedding into the general criminal process.
Preventive measures		
4. Secrecy laws consistent with the Recommendations	**Largely compliant**	There should be consistent provisions in legislation ensuring that requests for information by the FMS cannot be challenged because of confidentiality / secrecy. Financial institutions are not specifically authorised to share information for the implementation of Recommendation 7 and SR.VII.
5. Customer due diligence	**Partially compliant**	There should be a specific provision clearly prohibiting the opening of anonymous accounts or accounts in fictitious names in respect of all financial institutions which are able to keep accounts for physical and legal persons. The AML Law has implemented some customer identification obligations but full CDD requirements and on-going due diligence are not implemented in the law. There is no explicit legal requirement on the financial institutions to implement CDD measures when: - financial institutions carry out (domestic or international) transactions which appear to be linked and are above the threshold of US$/Euro 15,000,

		- carrying out occasional transactions that are wire transfers, - there is a suspicion of ML and FT; - financial institutions have doubts about the veracity or adequacy of previously obtained customer identification data. Financial institutions are required to identify the person on whose behalf the client is acting, but neither the AML Law nor FMS Decrees contain a definition of "beneficial owner" and also the requirement to identity and to verify his/her/its identity is missing. There is no obligation on financial institutions to obtain information on the purpose and nature of the business relationship or to conduct on-going due diligence. The Georgian authorities should introduce a "risk based approach", performing enhanced and simplified CDD measures for different categories of customers, business relationships, transactions and products. For higher risk customers the monitoring entities should conduct enhanced due diligence and as necessary use reliable independent documents other than those set out in the AML Law. There is an inadequate obligation for financial institutions to keep documents, data and information up to date. There is no clear obligation on the financial institutions to consider making an STR to the FMS in case of failure to satisfactorily complete CDD requirements before account opening or commencing business relations or where the business relationship has commenced and doubts about the veracity or adequacy of previously obtained data arise. As regards existing clients, there is no obligation to apply CDD requirements to existing customers on the basis of materiality and risk and to conduct due diligence on such existing relationships at appropriate times.
6. Politically exposed persons	**Non compliant**	The Georgian AML/CFT system does not contain any enforceable measures concerning the establishment of business relationships with politically exposed persons (PEPs).
7. Correspondent banking	**Non compliant**	Georgia has not implemented any enforceable AML/CFT measures concerning establishment of cross-border correspondent banking relationships.
8. New technologies and non face-to-face business	**Non compliant**	Currently, modern financial technology is not widespread in the Georgian financial industry. The AML Law does not contain enforceable measures requiring financial institutions to have in place or take measures to prevent the misuse of technological developments in AML/CFT schemes and to address the

		specific risks associated with non-face to face business relationships or transactions.
9. Third parties and introducers	**N/A**	Recommendation 9 is not applicable to the Georgian AML/CFT system.
10. Record keeping	**Partially compliant**	• AML Law should require the maintenance of necessary records of all domestic and international transactions and not exclusively those transactions "subject to monitoring". • Financial institutions should be permitted by law or regulation to keep all necessary records on transactions for longer than five years if requested to do so in specific cases by a competent authority upon proper authority. • Financial institutions should be required to keep identification data for longer than five years where requested by a competent authority in specific cases on proper authority.
11. Unusual transactions	**Non compliant**	• Although the definition of "suspicious transactions" broadly covers transactions which do not provide verified economic (commercial) content, have an unclear lawful purpose or are inconsistent with the ordinary business activity of the person, there is no explicit requirement for financial institutions to pay attention to and to analyse all complex, unusual large transactions or unusual patterns of transactions. • There is no clear and explicit requirement for financial institutions to proactively analyse all complex, unusual large transactions or unusual patterns of transactions, that have no apparent or visible economic or lawful purpose beyond those transactions "subject to monitoring" under the AML Law. • Although the AML Law requires financial institutions to retain a hardcopy of the reporting form for no less than five years, there is not a specific requirement in the AML Law or in FMS Decrees, to set forth their findings on complex, large and unusual patterns of transactions, that have no apparent or visible economic or lawful purpose, in writing and to keep these findings available for at least 5 years.
12. DNFBP – R.5, 6, 8-11	**Non compliant**	• No CDD requirements regarding real estate agents, lawyers and accountants; • Existing CDD requirements have the same deficiencies as applied to financial institutions generally and the lack of inspections covering this issue raises questions about the effectiveness of implementation of existing standards.
13. Suspicious transaction	**Partially**	• The reporting requirement which should be in law

reporting	**compliant**	or regulation should clearly cover all predicate offences required under Recommendation 13. The requirement to report suspicious transactions should clearly cover tax matters. • There is no clear legal requirement to report funds suspected to be linked or related to financing of terrorism as required by criterion 13.2 • The language of "grounded supposition" should be replaced with "reasonable grounds to suspect". • More guidance and outreach required to ensure that all financial institutions are reporting suspicious transactions (effectiveness).
14. Protection and no tipping-off	**Partially compliant**	• Safe harbour provisions should cover temporary as well as permanent staff. • The protection in Article 12 (3) AML Law should clearly apply to criminal as well as civil liability. • "Tipping off" is institutionally prohibited and should clearly cover the individual persons covered in FATF Recommendation 4. It is not criminally sanctionable and no administrative sanctions are provided in the AML Law. A clear provision of general application sanctioning tipping off by employees by financial institutions (as well as the financial institutions themselves) should be provided.
15. Internal controls, compliance and audit	**Partially compliant**	• Clear provision should be made for compliance officers to be designated at management level. • Apart from banks and credit unions, financial institutions are not required to implement and maintain an adequately resourced and independent audit function. • There is no requirement to establish ongoing training for employees on current ML/FT techniques, methods and trends. • There is no obligation on financial institutions to establish screening procedures to ensure high standards when hiring employees.
16. DNFBP – R.13-15 & 21	**Partially compliant**	• No reporting requirements regarding real estate agents, lawyers and accountants; the existing requirements are ineffective and the internal control procedures are not always fully in place. • More outreach and guidance to those DNFBP with reporting obligations is required to explain the reporting obligation.
17. Sanctions	**Partially compliant**	• The administrative sanctions system does not clearly extend to CFT. Different authorities can apply sanctions for AML infringements, according to the requirements of each sectoral Decree, and there is no clearly harmonised approach across all

		supervisory authorities as to which infringements should be sanctionable and as to the levels of such sanctions. A Decree is required for brokers companies containing sanctionable obligations. • The Ministry of Economic Development needs legal powers to sanction for AML/CFT. • Sanctions should apply to Directors and Senior management in appropriate cases. • Reducing the level of the sanctions as a consequence of the NBG Decree No.87 for the banks sends the wrong message to all the remaining monitoring entities. The sanctions regime should be much more effective, dissuasive and proportionate. • No sanctions are applicable concerning dealers in precious metals and dealers in precious stones, and casinos for non-compliance with the AML Law.
18. Shell banks	**Partially compliant**	• There is no explicit prohibition on establishment of shell banks. • There is no specific provision for the financial institutions to prohibit to enter into, or continue, correspondent banking relationship with shell banks. • There is no specific requirement on the financial institutions to satisfy themselves that foreign respondent financial institutions do not permit their accounts to be used by shell banks.
19. Other forms of reporting	**Compliant**	
20. Other DNFBP and secure transaction techniques	**Largely compliant**	• Georgian has extended Recommendation 20 to non-financial businesses and professions other than DNFBP in the cases of dealers in antiques and entities organising lotteries and commercial games and entities engaged in extension of grants and charity assistance but effective implementation of the relevant FATF Recommendations still needs to be achieved. • Further measures to encourage a reduction of cash in the economy need to be taken.
21. Special attention for higher risk countries	**Partially Compliant**	• In the case of all transactions (with persons from or in countries which do not or insufficiently apply FATF Recommendations) which have no apparent economic or visible lawful purpose, there is no specific requirement on the financial institutions to examine the background and purpose of such transactions and set out their findings in writing and to make them available to the competent authorities. • A more targeted method for advising financial

		institutions of countries which insufficiently apply the FATF Recommendations should be considered. • There are no mechanisms in place to apply counter measures.
22. Foreign branches and subsidiaries	**Non-compliant**	• Though the risks are low at present, there is no specific requirement on the financial institutions to require the application of AML/CFT measures to foreign subsidiaries consistent with home country requirements. • There is no provision that requires financial institutions to inform their home country supervisor when a foreign subsidiary or branch is unable to observe appropriate AML/CFT measures.
23. Regulation, supervision and monitoring	**Partially compliant**	• The Ministry of Economic Development should commence its AML/CFT supervisory activities in respect of the Georgian Post and supervision of exchange bureaus needs strengthening. • No fit and proper criteria for shareholders, directors and managers of insurance companies and founders of non-State pension schemes. • No provisions regulating market entry for currency exchange bureaus. • No law licensing and regulating postal operations with regard to money remittances. • Different rules apply in respect of assessing the fitness and propriety of persons holding significant interests in financial institutions. • The AML/CFT supervision and regulation in financial institutions that are subject to the core principles appear adequate; a programme of inspections needs to be implemented for the postal services.
24. DNFBP - Regulation, supervision and monitoring	**Partially compliant**	• Licensing of casinos should include inquiry into the fitness and propriety of holders or beneficial owners of significant or controlling interests in casinos and those holding management functions. • Supervision regarding casinos is ineffective at present and effective systems for ensuring compliance in respect of dealers in precious metals and dealers in precious stones are not in place.
25. Guidelines and Feedback	**Partially compliant**	There are some general guidelines or indicators in the AML Law and in some of the regulations. They have also provided some guidelines on suspicion to notaries. Sector specific guidance on suspicious transactions needs to be provided and adequate and appropriate feedback needs to be given to financial institutions (and DNFBP) required to make suspicious transaction

		reports in line with the FATF Best Practice Guideline on Providing Feedback to Reporting Financial Institutions and Other Persons.
Institutional and other measures		
26. The FIU	**Largely compliant**	• The efficiency of the FIU could be affected by the limited scope of the reporting obligation for TF. • More public reports with statistics, typologies and trends should be provided.
27. Law enforcement authorities	**Partially compliant**	• There are designated law enforcement bodies in place to investigate money laundering and terrorist financing with most investigative tools but the effectiveness of investigation / prosecution of money laundering has yet to be fully tested in respect of autonomous money laundering cases (particularly foreign predicates). • Power to postpone or waive arrest or seize money in the circumstances specified in Criterion 27.2 needs clarifying.
28. Powers of competent authorities	**Compliant**	
29. Supervisors	**Largely compliant**	• There should be a general clear power for supervisors to compel documents in all cases.
30. Resources, integrity and training	**Largely compliant**	• Law enforcement and prosecutors need more guidance and training on the minimum evidential requirements to commence money laundering cases; • Greater training and familiarisation with the new forfeiture and seizure provisions and on financial investigation techniques generally is needed. • The numbers of and training for supervisors in the Ministry of Economic Development for postal organisation was inadequate.
31. National co-operation	**Partially compliant**	The authorities responsible for AML/CTF cooperate only from time to time but there are no mechanisms and rules concerning such a co-operation.
32. Statistics	**Partially compliant**	• Statistical information was provided in response to the examiners' requests, but much of the information provided was not routinely kept and analysed. • More detailed and up to date statistics should be maintained (money laundering investigations; indictments; all convictions and sentences including whether confiscation was ordered). Keeping information on a regular basis on the underlying predicate offences, whether the offence was prosecuted autonomously or together with the predicate offence; and which offences were self laundering will assist subsequent domestic analysis of the effectiveness of criminalisation. • Detailed statistics should be maintained to

		demonstrate the effectiveness of the FIU's work and the effectiveness of the overall AML/CFT system as a whole. • More detailed statistical information needs to be kept on the results of supervisory inspections and the results should be reviewed collectively. • Statistics concerning mutual legal assistance do not provide information about the average time of response. Statistics should be kept on an annual basis. • FIU statistics on international cooperation need refining to show timeliness of responses, and whether or not requests were capable of being fulfilled in whole or in part. More statistics need to be kept in relation to information exchange by the supervisory authorities and in respect of informal international information exchange by police units.
33. Legal persons – beneficial owners	**Partially compliant**	• While Georgian law allows for some transparency with respect to immediate ownership, no regulations are in place providing adequate transparency concerning the beneficial ownership and control of legal persons. • Though shareholder information seems available on the entrepreneurial register, the examiners could not find authority for this.
34. Legal arrangements – beneficial owners	**Not applicable**	
International Co-operation		
35. Conventions	**Partially compliant**	The Vienna and Terrorist Financing Convention had been brought into force at the time of the on-site visit. Some aspects of the physical and material elements of the Vienna Convention need further clarification (transfer of property knowing that property is proceeds for the purpose of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his action and simple acquisition or use of property known to be proceeds are not fully covered). There is a reserve on the effectiveness of implementation of the money laundering offence under the Vienna Convention. At the time of the on-site visit, the Palermo Convention was not ratified[50]. Several issues under that Convention were problematic including corporate liability and the threshold for the money laundering offence.
36. Mutual legal assistance (MLA)	**Largely compliant**	The definitional problem of the ML offence would render MLA problematic in ML cases based on tax and customs predicates where dual criminality is required. Similarly the width of the financing of terrorism

[50] On 5 September 2006 Georgia also ratified the Palermo Convention.

		incrimination would limit MLA based on dual criminality.
37. Dual criminality	**Compliant**	
38. MLA on confiscation and freezing	**Partially compliant**	• As new provisions on seizing, freezing and confiscating proceeds and property on the value based principle are untested in international cooperation, the evaluators had a reserve on effectiveness; • No consideration of asset forfeiture fund or sharing of confiscated assets with other countries where confiscation is a result of co-ordinated law enforcement action.
39. Extradition	**Compliant**	
40. Other forms of co-operation	**Largely compliant**	Broad capacity for information exchange by FIU, but more detailed statistics required to demonstrate effectiveness. More MOUs should be considered by supervisory authorities and statistical information should be kept and made available to demonstrate extent of co-operation. More information should be kept on informal exchanges of information between police authorities.
Nine Special Recommendations		
SR.I Implement UN instruments	**Partially compliant**	While the United Nations lists are being circulated, there is no clear legal structure for the conversion of designations under 1267 and 1373 and a comprehensive system is not fully in place. In particular, insufficient guidance and communication mechanisms with all financial intermediaries and DNFBP. Georgia has not provided clear and publicly known procedures for delisting and unfreezing. The Terrorist Financing Convention, though in force, is not fully implemented – including Article 2.1 (the TF offence) and parts of Article 18 in connection with the identification of beneficial owners.
SR.II Criminalise terrorist financing	**Non compliant**	The Criminal Code provides for participation in a terrorist organisation and assisting foreign terrorist organisations in terrorist activities. The Georgian authorities also relied on the possibility of proceeding for aiding and abetting an offence of terrorism or the formation of a terrorist group. While there have been some investigations, there have been no cases and no jurisprudence. Criminalising financing of terrorism solely on the basis of aiding and abetting principles is not in line with the Methodology. The present incrimination of financing of terrorism appears not wide enough clearly to sanction criminally in respect of both individuals and legal persons (the latter were, in any event, not covered by Georgian Law at the time of the on-site visit):

		• The collection of funds with the intention that they should be used or in the knowledge that they should be used in full or in part to carry out the acts referred to in Article 2a and b of the Financing of Terrorism Convention (including whether or not the funds are actually used to carry out or attempt to carry out a terrorist act) • The provision or collection of funds for a terrorist organisation for any purpose including legitimate activities • The collection and provision of funds with the unlawful intention that they should be used in full or in part by an individual terrorist (for any purpose) • All types of activity which amount to terrorist financing so as to render all of them predicate offences to money laundering. An autonomous offence of financing of terrorism should be introduced which addresses all aspects of SR.II and its Interpretative Note.
SR.III Freeze and confiscate terrorist assets	**Partially compliant**	• No clear legal structure for the conversion of designations into Georgian Law under UNSCR 1267 and 1373 or under procedures initiated by third countries; • A Designating Authority is required for UNSCR 1373; • Clarification required that freezing should be without delay and not await the completion of transactions before lists are checked; • Clearer guidance on obligations required; • Publicly known procedures for considering de-listing and unfreezing are required, and for persons inadvertently affected; • Unclear whether the prosecutorial freeze under Article 190 (2) CPC will ultimately be effective to sustain or maintain freezing of assets of designated persons; • All supervisors should be actively checking compliance with SR.III as no assets have been frozen under the UNSCRs.
SR.IV Suspicious transaction reporting	**Partially compliant**	• There is no clear requirement in law or regulation to ensure that financial institutions are clearly obliged to report where they suspect or have reasonable grounds to suspect that funds of legal and physical persons (whether licit or illicit) are linked or related to, or to be used for terrorism, terrorist acts or by terrorist organisations or those who finance terrorism (apart from transactions involving persons that are on terrorist lists). • The three reports to FMS said to be reports under SR.IV (though reported on the general report

		form) were insufficient for the evaluators to conclude that there is a real and effective STR reporting system relating to SR.IV (which is distinct from SR.III) which is understood as such by all the financial institutions.
SR.V International co-operation	**Partially Compliant**	• The width of the present financing of terrorism offences would limit MLA based on dual criminality (particularly for compulsory measures). • There are no special provisions concerning extradition in relation to financing of terrorism offences; as financing of terrorism is not yet criminalised in all its aspects, extradition might be impossible in some cases. • There is little practice in information exchange in relation to financing of terrorism, terrorist acts or terrorist organisations. Legally the powers are in place for information exchange by the FIU as the FIU has a remit in this area. More statistical information on this aspect should be kept.
SR.VI AML requirements for money/value transfer services	**Partially compliant**	• Value transfer business not licensed/registered. • No on-site or off-site controls have been conducted at postal organisations.
SR.VII Wire transfer rules	**Non Compliant**	Although banks and Georgian Post are obliged under the AML Law to perform any transfer only after customer identification and record keeping (so far as it goes), there is no comprehensive legal framework addressing all the requirements as set out in SR VII in regard of commercial banks and the Georgian Post.
SR.VIII Non-profit organisations	**Partially compliant**	• No special overall review of the risks in the NPO sector has been undertaken, though there is some financial transparency and reporting structures to the Ministry of Justice and tax agencies. • No regular programme of field audits. The Ministry of Finance should begin AML/CFT monitoring for entities engaged in extension of grants and charity assistance. Consideration should be given to effective and proportionate oversight of the whole NPO sector. Closer liaison between the governmental departments involved is required and greater sharing of information between them and with law enforcement. • STR guidance should be issued in respect of transactions in this sector below the 30,000 GEL.
SR.IX Cross Border declaration and disclosure	**Non compliant**	• The monitoring by Customs of monetary units in excess of 30,000 GEL provided for in the AML Law and by Customs Decree is wholly ineffective in operation; • FMS needs full information on the levels of cross-border cash movements and at present has hardly any;

		• The sanctions regime for breaches of the Customs Code is not dissuasive; • A clear and effective system needs to be put in place to stop and restrain currency or bearer negotiable instruments for a reasonable time in order to ascertain whether evidence of money laundering or terrorist financing may be found; • Clearer coordination arrangements with other law enforcement bodies involved in cross-border issues should be put in place to ensure that SR.IX is fully implemented; • A database including lists of high risk groups needs creating, and Customs need sensitising and training to detect cross-border movements associated with money laundering and financing of terrorism.

Table 2. Recommended Action Plan to improve the AML/CFT system

FATF 40+9 Recommendations	Recommended Action (listed in order of priority)
1. General	
2. Legal System and Related Institutional Measures	
Criminalisation of Money Laundering (R.1 and 2)	• Clarify legislative provisions to ensure that all aspects of the physical and material elements in the Vienna and Palermo Conventions are covered; • preparation/conspiracy to commit money laundering should be fully covered in Georgian law; • Simple possession or use of laundered proceeds should be covered; • Financing of terrorism should be covered in designated categories of predicate offences, and insider trading should be fully covered; • The exemption for crimes committed in the tax and Customs sphere in the definition of illicit income in the preventive law should be removed; • The financial value threshold should be removed; • Further clarification of the evidence required to establish underlying predicate criminality in autonomous money laundering prosecutions should be considered, and more emphasis placed on autonomous money laundering prosecutions (especially in relation to foreign predicates) for a fully effective criminalisation of money laundering; • Georgian authorities should provide for criminal, civil or administrative liability for money laundering in respect of legal entities.
Criminalisation of Terrorist Financing (SR.II)	An autonomous offence of financing of terrorism should be introduced which addresses all aspects of SR.II and its Interpretative Note.
Confiscation, freezing and seizing of proceeds of crime (R.3)	• It should clarified that the objects of money laundering and instrumentalities can be subject to mandatory forfeiture in a stand alone money laundering case. • New confiscation, freezing and seizing provisions need embedding into the general criminal process.
Freezing of funds used for terrorist financing (SR.III)	• A clear legal structure for the conversion of designations into Georgian Law under UNSCR 1267 and 1373 or under procedures initiated by third countries is required; • A designating authority is required for UNSCR 1373; • Clarification required that freezing should be without delay and not await the completion of transactions before lists are

	checked; • Clearer guidance on obligations required; • Publicly known procedures for considering de-listing and unfreezing are required, and for persons inadvertently affected; • All supervisors should actively check compliance with SR.III
The Financial Intelligence Unit and its functions (R.26, 30 and 32)	• More public reports with statistics, typologies and trends should be provided.
Law enforcement, prosecution and other competent authorities (R.27, 28, 30 and 32)	• The Georgian authorities should proactively pursue investigations / prosecutions in respect of autonomous money laundering cases (particularly foreign predicates). • Power to postpone or waive arrest or seize money in the circumstances specified in Criterion 27.2 needs clarifying.
SR. IX Cross border declaration and disclosure	• An effective system of monitoring by Customs of monetary units in excess of 30,000 GEL needs to be put in place; • FMS needs full information on the levels of cross-border cash movements; • The sanctions regime for breaches of the Customs Code should be reviewed; • A clear and effective system needs to be put in place to stop and restrain currency or bearer negotiable instruments for a reasonable time in order to ascertain whether evidence of money laundering or terrorist financing may be found; • Clearer coordination arrangements with other law enforcement bodies involved in cross-border issues should be put in place; • A database including lists of high risk groups needs creating, and Customs need sensitising and training to detect cross-border movements associated with money laundering and financing of terrorism.
3. Preventive Measures– Financial Institutions	
Risk of money laundering or financing of terrorism	
Financial institution secrecy or confidentiality (R.4)	• There should be consistent provisions in legislation ensuring that requests for information by the FMS cannot be challenged because of confidentiality / secrecy. • Financial institutions should be authorised to share information for the implementation of Recommendation 7 and SR.VII.
Customer due diligence, including enhanced or reduced measures (R.5, R.7)	The evaluators advise that obligations in the AML/CFT methodology marked with an asterisk are put into the AML Law. There should be a specific provision clearly prohibiting the opening of anonymous accounts or accounts in fictitious names in respect of all financial institutions which are able to

	keep accounts for physical and legal persons. The AML Law should provide full CDD requirements and requirements for on-going due diligence. Explicit legal requirement on the financial institutions to implement CDD measures when: - financial institutions carry out (domestic or international) transactions which appear to be linked and are above the threshold of US$/Euro 15,000, - carrying out occasional transactions that are wire transfers, - there is a suspicion of ML and FT; - financial institutions have doubts about the veracity or adequacy of previously obtained customer identification data. Financial institutions should be obliged to identify the beneficial owner as defined in the FATF Recommendations and also to verify the identity of the beneficial owner. There needs to be an obligation on financial institutions to obtain information on the purpose and nature of the business relationship or to conduct on-going due diligence. The Georgian authorities should consider introducing a "risk based approach", performing enhanced and simplified CDD measures for different categories of customers, business relationships, transactions and products. For higher risk customers the monitoring entities should conduct enhanced due diligence and as necessary use reliable independent documents other than those set out in the AML Law. A clear obligation on the financial institutions to consider making an STR to the FMS in case of failure to satisfactorily complete CDD requirements before account opening or commencing business relations or where the business relationship has commenced and doubts about the veracity or adequacy of previously obtained data arise needs to be provided for. An obligation to apply CDD requirements to existing customers on the basis of materiality and risk and to conduct due diligence on such existing relationships at appropriate times is required.
(R.6)	The Georgian AML/CFT system should introduce enforceable measures concerning the establishment of business relationships with politically exposed persons (PEPs).
(R.8)	Enforceable measures need taking to require financial institutions to have in place or take measures to prevent the misuse of technological developments in AML/CFT schemes and to address the specific risks associated with non-face to face business relationships or transactions.
(R.9)	

Record keeping and wire transfer rules (R.10 and SR.VII)	• AML Law should require the maintenance of necessary records of all domestic and international transactions and not exclusively those transactions "subject to monitoring". • Financial institutions should be permitted by law or regulation to keep all necessary records on transactions for longer than five years if requested to do so in specific cases by a competent authority upon proper authority. • Financial institutions should be required to keep identification data for longer than five years where requested by a competent authority in specific cases on proper authority. • There should be a comprehensive legal framework addressing all the requirements as set out in SR VII in regard of commercial banks and the Georgian Post..
Monitoring of transactions and relationships (R.11 and 21)	• Financial institutions should be obliged to pay attention to and to analyse all complex, unusual large transactions or unusual patterns of transactions, that have no apparent or visible economic or lawful purpose. • Financial institutions should proactively analyse all complex, unusual large transactions or unusual patterns of transactions, that have no apparent or visible economic or lawful purpose beyond those transactions "subject to monitoring" under the AML Law. • There should be a specific requirement in the AML Law or in FMS Decrees, to set forth the findings of financial institutions on complex, large and unusual patterns of transactions, that have no apparent or visible economic or lawful purpose, in writing and to keep these findings available for at least 5 years. • There should be a specific requirement on the financial institutions to examine the background and purpose of transactions (with persons from or in countries which do not or insufficiently apply FATF Recommendations) which have no apparent economic or visible lawful purpose, and set out their findings in writing and to make them available to the competent authorities. • A more targeted method for advising financial institutions of countries which insufficiently apply the FATF Recommendations should be considered. • Mechanisms need to be considered for applying counter measures.
Suspicious transaction reports and other reporting (R.13 and 14, 19, 25 and SR.IV)	• The reporting requirement which should be in law or regulation should clearly cover all predicate offences required under Recommendation 13. The requirement to report suspicious transactions should clearly cover tax matters. • There should be a clear legal requirement to report funds suspected to be linked or related to financing of terrorism as required by criterion 13.2.

	• The language of "grounded supposition" should be replaced with "reasonable grounds to suspect". • More guidance and outreach required to ensure that all financial institutions are reporting suspicious transactions. • Safe harbour provisions should cover temporary as well as permanent staff. • The protection in Article 12 (3) AML Law should clearly apply to criminal as well as civil liability. • A clear provision of general application covering tipping off by employees of financial institutions (as well as the financial institutions themselves) should be provided. • Sector specific guidance on suspicious transactions needs to be provided and adequate and appropriate feedback needs to be given to financial institutions (and DNFBP) required to make suspicious transaction reports in line with the FATF Best Practice Guideline on Providing Feedback to Reporting Financial Institutions and Other Persons. • A clear requirement in law or regulation for financial institutions to report where they suspect or have reasonable grounds to suspect that funds of legal and physical persons (whether licit or illicit) are linked or related to, or to be used for terrorism, terrorist acts or by terrorist organisations or those who finance terrorism should be provided for.
Internal controls, compliance, audit and foreign branches (R.15 and 22)	• A clear provision should be made for compliance officers to be designated at management level. • Financial institutions should be generally required to implement and maintain an adequately resourced and independent audit function. • Ongoing training for employees on current ML/FT techniques, methods and trends is needed. • Financial institutions should establish screening procedures to ensure high standards when hiring employees. • A requirement on financial institutions to apply AML/CFT measures to foreign subsidiaries consistent with home country requirements should be introduced for the future.
The supervisory and oversight system – competent authorities and SROs roles, functions, duties and powers (including sanctions) (R.17, 23, 29 and 30)	• Administrative sanctions system should clearly extend to CFT. A clearly harmonised approach to sanctioning across all supervisory authorities needs to be developed. • The sanctions regime should be much more effective, dissuasive and proportionate. • A Decree is required for brokers companies containing sanctionable obligations. • The Ministry of Economic Development needs legal powers to sanction for AML/CFT.

	• Sanctions should apply to Directors and Senior management in appropriate cases. • Sanctions should apply to dealers in precious metals and dealers in precious stones, and casinos for non-compliance with the AML Law. • The Ministry of Economic Development should commence its AML/CFT supervisory activities in respect of the Georgian Post and supervision of exchange bureaus needs strengthening. • A programme of inspections needs to be implemented for the postal services. • There should be a general clear power for all supervisors to compel documents in all cases.
Shell banks (R.18)	• There should be an explicit provision prohibiting the establishment of shell banks. • Financial institutions should be prohibited to enter into, or continue, correspondent banking relationship with shell banks. • Financial institutions should satisfy themselves that foreign respondent financial institutions do not permit their accounts to be used by shell banks.
Financial institutions – market entry and ownership/control (R.23)	• Fit and proper criteria for shareholders, directors and managers of insurance companies and founders of non-State pension schemes need developing and provisions regulating market entry for currency exchange bureaus. • A licensing regime should be put in place regulating money remittances. • A consistent and harmonised approach should be taken in the assessment of the fitness and propriety of persons holding significant interests in financial institutions.
Ongoing supervision and monitoring (R23, 29)	• The Ministry of Economic Development should commence its AML/CFT supervisory activities in respect of the Georgian Post and supervision of exchange bureaus needs strengthening.
AML/CFT Guidelines (R.25)	• Sector specific guidance on suspicious transactions needs to be provided and adequate and appropriate feedback needs to be given to financial institutions (and DNFBP) required to make suspicious transaction reports in line with the FATF Best Practice Guideline on Providing Feedback to Reporting Financial Institutions and Other Persons.
Money or value transfer services (SR.VI)	• Value transfer business should be licensed/registered.

4. Preventive Measures – Designated Non-Financial Businesses and Professions	
Customer due diligence and record-keeping (R.12)	• The changes recommended for CDD requirements for financial institutions should be applied also to DNFBP. • Customer due diligence and record keeping requirements set out in Recommendations 5, 6, and 8 to 11 should apply to real estate agents, lawyers and accountants in the situations described in Recommendation 12.
Monitoring of transactions and relationships (R.12 and 16)	• Requirements under Recommendation 13 to 15 and 21 should apply to real estate agents, lawyers, accountants and trust and company service providers subject to the qualifications in Recommendation 16. • More outreach and guidance to those DNFBP with reporting obligations is required to explain the reporting obligation.
Regulation, supervision and monitoring (R.17, 24-25)	• Licensing of casinos should include inquiry into the fitness and propriety of holders or beneficial owners of significant or controlling interests in casinos and those holding management functions. • An effective inspection programme regarding supervision of casinos should be put in place. • Monitoring on AML/CFT issues in respect of dealers in precious metals and dealers in precious stones needs to be developed.
Other designated non-financial businesses and professions (R.20)	
3. Legal Persons and Arrangements and Non-profit Organisations	
Legal Persons–Access to beneficial ownership and control information (R.33)	• It is recommended that the register should include information on the beneficial ownership and control of legal persons.
Legal Arrangements–Access to beneficial ownership and control information (R.34)	
Non-profit organisations (SR.VIII)	• An overall review of the risks in the NPO sector needs to be undertaken. • The Ministry of Finance should begin AML/CFT monitoring for entities engaged in extension of grants and charity assistance. Consideration should be given to effective and proportionate oversight of the whole NPO sector. • Closer liaison between the governmental departments involved is required and greater sharing of information between them and with law enforcement. • STR guidance should be issued in respect of transactions in this sector below the 30,000 GEL.

6. National and International Co-operation	
National Co-operation and Co-ordination (R.31)	• The examiners advise that a coordination of senior officials responsible for AML/CFT in each of the relevant sectors is set up to assess the performance of the system as a whole and make recommendations, as necessary, to government.
The Conventions and UN Special Resolutions (R.35 and SR.I)	• Provide for adequate criminalisation of financing of terrorism and ensure that there is a comprehensive legal structure for the implementation of UN Resolutions. The requirements of the UN Conventions should be reviewed to ensure that Georgia is fully meeting all its obligations under them..
Mutual Legal Assistance (R.32, 36-38, SR.V)	• Enact an autonomous financing of terrorism offence to improve the capacity for rendering MLA. • Consideration should be given to an asset forfeiture fund and a system for sharing of confiscated assets with other countries where confiscation is a result of co-ordinated law enforcement action.
Extradition (R.32, 37 and 39, and SR.V)	• Enact an autonomous offence of terrorist financing to improve extradition capacity in relation to financing of terrorism offences.
Other forms of co-operation (R.40 and SR.V)	• More MOUs should be considered by supervisory authorities and statistical information should be kept and made available to demonstrate extent of co-operation. More information should be kept on informal exchanges of information between police authorities.

V. LIST OF ANNEXES

ANNEX I - Details of all bodies met on the on-site mission - Ministries, other government authorities or bodies, private sector representatives and others

- State Minister of Georgia
- Representatives of the Financial Monitoring Service of Georgia (FMS)
- National Bank of Georgia (NBG)
- Insurance State Supervision Service of Georgia
- National Securities Commission of Georgia
- Ministry of Economic Development of Georgia
- Compliance officers from commercial banks and brokerage companies
- Ministry of Finance of Georgia
- Customs Department
- Tax Department
- Gambling Supervision Unit
- Ministry of Justice of Georgia
- Bar Association of Georgia
- Georgian Insurers Association
- Auditor's Activities Council of Georgia
- Georgian Banks Association
- General Prosecutor's Office of Georgia
- Anti-Money Laundering Unit
- Legal Provision Department
- Ministry of Internal Affairs of Georgia
- Special Operative Department
- Anti-Terrorist Centre
- Constitutional Safety Department
- Supreme Court of Georgia
- Ministry of Foreign Affairs of Georgia
- President of the National Bank of Georgia
- Head of Georgian delegation to MONEYVAL

ANNEX II - Compliance with the Second EU AML Council Directive

Article 2a

Description and Analysis	Article 2a of the Second AML Directive of the European Union lists the type of institutions and persons (both natural and legal) acting in the exercise of certain professions and businesses that are subject to the provisions of this Directive. As regards legal professions, this provision specifies the type of activities for which the obligations is applicable. The obligations of the AML Law apply to banks, currency exchange offices, credit unions , brokers companies, securities registrars, insurance companies, non state pension scheme founders, entities organizing lotteries and other commercial games entities engaged in activities related to precious metals, precious stones and products as well as antiquities, customs authorities, entities engaged in extension of grants and charity assistance, notaries and postal organisations (money remittance). Auditors, external accountants, tax advisors and real estate agents and legal professionals other than notaries are not referred to as monitoring entities under the AML Law and therefore no AML requirements are applicable. Besides dealers in precious metals and stones also (and only) dealers in antiquities are referred to as monitoring entities under the AML Law. The general requirements of the AML Law are applicable. No specific normative acts are issued nor are other more specific CDD requirements. Considering that internal controls and adequate supervision are lacking, there is no supervision at all, and so far transaction reports are not received), the effectiveness of (implementation of) the requirements is highly insufficient or at least has to be seriously questioned (see Section 4.4 of the Report).
Conclusion	The AML Law is not fully in compliance with Article 2a of the Second EU AML Council Directive, although the application of the requirements to dealers in antiquities is considered positive (notwithstanding its questionable effectiveness).
Recommendations and Comments	To comply with Article 2a of the Second EU AML Council Directive Georgian Authorities may wish to consider to also add auditors, external accountants and tax advisors, real estate agents and legal professions other than notaries and dealers in high value goods other than the above mentioned (such as works of art) to the list of monitoring entities.

Article 3 (3) and (4)

Description and Analysis	By way of derogation from the mandatory requirement for the identification of customers by persons and institutions subject to the Directive, the third para of the Article 3 removes the identification requirement in case of insurance activities where the periodic premium to be paid does not exceed 1000,00 euros or where a single premium is paid amounting to 2.500,00 euros or less. Moreover the para 4 of the Article 3 provides for discretionary identification obligations in respect of pension scheme where relevant insurance policies contain no surrender value clause and may not be used as collateral for a loan. The AML Law does not permit any derogation for customer identification. All

	clients and persons willing to establish a business relationship, persons involved in operations (transactions) their representatives, agents as well as the third person on whose behalf the transaction is been concluded (is concluded) or operation is implemented.
Conclusion	The AML Law is compliant with the requirement of customer identification.
Recommendations and Comments	Once the GA introduce the "risk based approach" , performing enhanced and simplified CDD, measures for different categories of customers, business relationships, transaction and products, they should consider the provisions of Article 3(3) and 3(4) of the Directive.

Article 3 (5) and (6)

Description and Analysis	Under Article 3 para 5 of the Second EU AML Directive the identification of all clients of casinos is required if they purchase or sell gambling chips with a value of 1,000 Euro or more. However the subsequent para 6 provides that casinos subject to Supervisory Authority shall be deemed in any event to have complied with the identification requirements if they register and identify their clients immediately on entry, regardless of the number of gambling chips purchased. In Georgia all casinos are subject to state supervision exercised by the Ministry of Finance. The AML Law requires the preliminary identification of the customer to provide the client with services or establishing business relationship with him. FMS Decree No. 94 specifies that casinos have to (at the least) identify all customers on entry.
Conclusion	Having adopted procedures for the identification of all customers on entry of the casino, being state supervised, Georgia is in compliance with the provisions of Article 3 (6) of the Second EU AML Directive.
Recommendations and Comments	GA should consider to introduce this requirement in the AML Law.

Article 6 (1), 6(2) and 6(3)

Description and Analysis	Article 6 para 1 of the Second EU AML Directive provides for the reporting obligation to include facts which might be an indication of money laundering. Furthermore para 3 of the Article 6 of the Directive provides an option for member states to designate an appropriate self-regulatory body (SRB) in the case of notaries and other legal professions as the authority to be informed on STR or facts which might be an indications of money laundering. Finally the same para requires that where the option of reporting through an SRB has been adopted for legal profession, member state are required to lay down appropriate forms of cooperation between the SRB and the competent authorities responsible for contrasting money laundering. The AML Law requires monitoring entities to report any transaction suspected to be related to money laundering (so called "transactions subject to monitoring") and facts /circumstances which, according to the written instruction of the FMS, may be related to money laundering or financing terrorism. The FMS has not yet issued any written instruction on suspiciousness of facts/circumstances related money laundering or financing terrorism, In practice the reporting obligation seems to be limited to transactions and it does not include other facts that could constitute evidence of money laundering. The Georgian authorities took the view that the concluding sentence of Article 9

	section 1 of the AML Law in the Georgian language but not in the English translation reads "The Financial Monitoring Service shall be informed also about all those facts (circumstances) that in the judgment of the monitoring entity may be related to legalization of illicit income or financing terrorism". They considered that the use of the word "also" constitutes a separate obligation, distinct from suspicious transaction reporting and thus the obligation is wider than the linkage to the definition of suspicious transaction in Article 2 (h). Notaries are supervised by the Ministry of Justice and the AML Law requires all monitoring entities, including notaries, to report directly to the FMS.
Conclusion	The AML Law is not fully compliant with the Second EU AML Directive.
Recommendations and Comments	The Georgian authorities may wish to broaden the scope of the provision of Article 6 (1) to all facts (being a specific transaction or not).

Article 7

Description and Analysis	According to Article 7 of the Second EU AML Directive, Member States shall ensure that financial institutions refrain from carrying out transactions which they know or suspect to be related to money laundering until they have apprised the competent authorities. In addition, these authorities should have the power to stop the execution of a transaction that has been brought to their attention by an obliged person who has reason to suspect that such transaction could be related to money laundering. According to the AML Law and FMS Decrees, monitoring entities shall not suspend implementation of the transaction except for the following cases: (1) client can not be identified; (2) any party involved in the transaction is on the list of terrorists or persons supporting terrorism; (3) other cases provided by Georgian legislation (non-existing). According to Article 10 section 4 (f) of the AML Law, the FMS can apply to the court for the purpose of suspending a transaction if there is the grounded supposition that the property (transaction amount) will be used for financing of terrorism. But no such provision exists regarding transaction suspected to be related to money laundering.
Conclusion	The AML Law is not in compliance with Article 7 of the Second EU AML Directive.
Recommendations and Comments	To comply with Article 7 of the Second EU AML Council Directive the AML Law Georgian Authorities should ensure in the AML Law and/or Regulations that monitoring entities shall refrain from carrying out a transaction suspected to be related to money laundering until having forwarded a suspicious transaction report to the FMS (unless of course this could frustrate efforts to pursue the beneficiaries of the suspected money laundering operation). Moreover the FMS should have the power to stop the execution of a suspicious transaction related to money – laundering.

Article 8

Description and Analysis	Article 8 para 1 of the Second EU AML Directive prohibits institutions and persons subject to the obligations under the Directive and their directors and employees from disclosing to the person concerned or to third parties either that an STR or information has been transmitted to the authorities or that a money laundering investigation is being carried out. Furthermore Article 8 paragraph 2 provides an option for Member States not to apply this prohibition (tipping off) to notaries, independent legal professions, auditors, accountants and tax advisors. According to the AML Law and FMS Decrees monitoring entities (including

	notaries) are obliged to ensure confidentiality on information obtained to the monitoring process, as well as of information on completion of special reporting forms related to transactions subject to monitoring and submission to the FMS.
Conclusion	Although the AML Law and FMS Decrees address the "tipping off", the provisions are not fully in compliance with Article 8 of the Second EU AML Directive.
Recommendations and Comments	The Georgian Authorities may wish to reconsider the provisions regarding confidentiality with the objective to add directors and employees of monitoring entities and include the tipping off prohibition for ongoing money laundering investigations.

Article 10

Description and Analysis	Article 10 of the Second EU AML Directive imposes an obligation on supervisory authorities to inform the authorities responsible for combating money-laundering if, in the course of their inspections carried out in the institutions on persons subject to the Directive, or in any other way, such authorities discover facts that could constitute evidence of money laundering. The Directive requires the extension of this obligation to supervisory bodies that oversee the stock, foreign exchange and financial markets. According to Article 11 section 3 of the AML Law supervisory bodies have to immediately inform the FMS if it reveals a transaction subject to monitoring (including transactions suspected to be related to money laundering) that has not been forwarded to the FMS or guidelines (on the basis of the AML Law) or relevant normative acts of the FMS have been violated. Since the FMS has not issued any written instructions on facts/circumstances suspected of money laundering this provision seems to be limited to transactions (see also comments regarding Article 6 of the Directive).
Conclusion	The provision is limited to transactions that haven not been forwarded already and it doesn't include other facts that could constitute evidence of money laundering.
Recommendations and Comments	The Georgian Authorities may wish to broaden the scope of this provision to all facts (being a specific transaction or not) or to issue written instructions by the FMS.

Article 12

Description and Analysis	Article 12 of the Second AML EU Directive requires member States to ensure that the provisions of the Directive are extended, in whole or in part, to professions and categories of undertaking, other then the institutions and persons listed in article 2.a where they engage in activities likely to be used for money laundering purposes. The AML Law also covers "entities engaged in extension of grants and charity assistance" as monitoring entities (Article 3 letter g), customs authorities and entities organizing lotteries and other commercial games which are beyond what is required by the Directive.
Conclusion	The Georgian Authorities have considered this provision of the Directive by applying the AML law also to other persons/institutions, although the evaluators were informed that there are some difficulties in implementation of the AML Law for these persons/institutions.
Recommendations and Comments	The Georgian Authorities may wish to consider to fully implement the provisions of the AML Law for these persons /institutions.

ANNEX III

Designated categories of offences based on the FATF Methodology	Offence by the Criminal Code of Georgia
Participation in an organised criminal group and racketeering	Formation or Leading of or Participating in Paramilitary Units (CCG 223) Banditism (CCG 224) Participation in racketeering (CCG 224[1])
Terrorism, including terrorist financing	Terrorist Act (CCG 323) Technological Terrorism (CCG 324) Cyber terrorism (CCG 324[1]) Formation of Terrorist Organisation or leading thereof or Participation Therein (CCG 327) Accession and Assistance to Terrorist Organisation of Foreign State or to Such Organisation Controlled by Foreign State (CCG 328) Terrorism financing (CCG 331[1])[51]
Trafficking in human beings and migrant smuggling Sexual exploitation, including sexual exploitation of children	Trafficking in human beings (trafficking) (CCG 143[1]) Trafficking in underage persons (CCG 143[2])[52] Engaging Someone in Prostitution (CCG 253) Illicit Production or Sale of Pornographic Piece or Other Object (CCG 255) Engaging underage in Illicit Production or Sale of Pornographic Piece or Other Object (CCG 255[1])
Illicit trafficking in narcotic drugs and psychotropic substances	Illicit Preparation, Production, Purchase, Keeping, Shipment, Transfer or Sale of Narcotics, the Analogy or Precursor Thereof (CCG 260) Illicit Preparation, Production, Purchase, Keeping, Shipment, Transference or Sale of Psychotropic Substance, Its Analogy or Powerful Substance (CCG 261) Illegal Import to or Export from, or International Transit Shipment Across Georgia, of Narcotics, Analogy or Precursor Thereof (CCG 262) Illegal Import to or Export from, or International Transit Shipment Across Georgia, of Narcotics, Analogy or Precursor Thereof in Large Quantities (CCG 263) Misappropriation or Extortion of Narcotics, Analogy or Precursor Thereof, Psychotropic Substance, Its Analogy or Powerful Substance (CCG 264)
Illicit arms trafficking	Illicit Export of Technology, Scientific-Technical Information or Service for Production of Weapons of

[51] Article 331[1] was added to the CCG on August 25, 2006.

[52] Articles 143[1] and 143[2] set punishment for exploitation of human beings, forced labour, engaging human beings in criminal or other unlawful activity and prostitution, sexual exploitation, placing human being in modern slavery conditions and use thereof for purposes of transplanting bodily organs or parts thereof or tissue.

	Mass Destruction or Military Equipment (CCG 235) Illicit Purchase, Keeping, Carrying, Production, Shipment, Transfer or Sale of Fire-Arms, Ammunition, Explosive Material or Explosive Devise (CCG 236)
Illicit trafficking in stolen and other goods	Purchase or Sale of Illegally Obtained Object at Previous Knowledge (CCG 186) Illicit Sale of Blood or Blood Components (CCG 135) Sale of organs of human body (CCG 135[1])
Corruption and bribery	Legalisation of illicit income (money laundering) (CCG 195) Abuse of Authority (CCG 220) Commercial Bribe (CCG 221) Abuse of Official Authority (CCG 332) Exceeding Official Powers (CCG 333) Illicit Participation in Entrepreneurial Activity (CCG 337) Accepting Bribes (CCG 338) Accepting Illegal Presents (CCG 340) Falsification in Service (CCG 341)
Fraud	Forgery (CCG 180) Misappropriation or Embezzlement (CCG 182)
Counterfeiting currency	Illegal Obtaining of Credit (CCG 208) Counterfeiting Money or Security or Using Thereof (CCG 212)
Counterfeiting and piracy of products	Illicit Entrepreneurial Activity (CCG 192) False Entrepreneurship (CCG 193) Illegal Application of Trade (Service) Mark (CCG 196) Falsification (CCG 197) Manufacturing, Import and Sale of Products Hazardous for Human Life or Health (CCG 198) Production, Keeping, Sale or Freight of Excise Goods Subject to Stamping without Excise Stamps (CCG 200) Sale, purchase and use of excise marks for the purpose of secondary use or/and transfer thereof to other person (CCG 200[2]) Illegal Gathering or Spreading of Information Containing Commercial or Bank Secrets (CCG 202) Misappropriation of copyright or any other allied right similar thereof, as well as of data base developer (CCG 189) Encroachment Upon the Proprietary Right over industrial property (CCG 189[1])
Environmental crime	Violation of Rule on Application or Protection of Entrails (CCG 298) Illegal Application of Entrails (CCG 299) Illegal Catching of Fish or Other Living Water Creatures (CCG 300)
Murder, grievous bodily injury	Premeditated Murder (CCG 108) Premeditated Murder under Aggravating Circumstance (CCG 109)

	Intentional Damage to Health (CCG 117)
Kidnapping, illegal restraint and hostage-taking	Illegal Imprisonment (CCG 143) Taking hostages (CCG 144) Taking hostages for terrorist purposes (CCG 329)
Robbery or theft	Stealing (CCG 177) Theft (CCG 178) Robbery (CCG 179)
Smuggling	Breach of Customs Procedures (CCG 214)
Extortion	Extortion (CCG 181) Illegally Taking Possession for Misappropriation Purposes or Extortion of Arms, Ammunition, Explosive Material or explosive Device (CCG 237) Misappropriation or Extortion of Narcotics, Analogy or Precursor Thereof, Psychotropic Substance, Its Analogy or Powerful Substance (CCG 264) Misappropriation or Extortion of Poison (CCG 250)
Forgery	Production, sale and/or use of forged excise stamps (CCG 200[1]) Forging or Use of Credit or Settlement Card (CCG 210) Illegal Obtaining of Credit (CCG 208) Breach of Rule on Forging and Use of State Seal Indicating the Hallmark of Precious Metals (CCG 209)
Piracy	Pirating (CCG 228)
Insider trading and market manipulation	Monopolistic Activity and Restriction of Competition (CCG 195) Breach of Rule on Securities Market (CCG 213)